

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

AMENDED TRANSCRIPT
CONFIDENTIAL PORTIONS INCLUDED

IN RE:)	
)	
GARLOCK SEALING TECHNOLOGIES)	
LLC, et al,)	No. 10-BK-31607
)	
Debtors.)	VOLUME V-A
)	MORNING SESSION

TRANSCRIPT OF ESTIMATION TRIAL
BEFORE THE HONORABLE GEORGE R. HODGES
UNITED STATES BANKRUPTCY JUDGE
JULY 26, 2013

AMENDED TRANSCRIPT
CONFIDENTIAL PORTIONS INCLUDED:

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<u>DEBTORS' EXHIBIT:</u>	<u>E X H I B I T S</u>	<u>ADMITTED</u>
<u>NO.</u>		
0969		1148

P R O C E E D I N G S

JULY 26, 2013, COURT CALLED TO ORDER 9:00 A.M.:

MORNING SESSION:

THE COURT: Good morning.

ALL COUNSEL: Good morning.

THE COURT: Have a seat, we'll get started.

MR. CASSADA: Good morning, Your Honor. Thanks for agreeing to a little bit earlier start today.

Your Honor, we're shifting gears now from the physical sciences to the social sciences as we are putting on our estimation case. We're going to call this morning Professor Lester Brickman of the Cardozo Law School.

Professor.

At some point in Professor Brickman's testimony we will be getting into material that the parties have designated as confidential.

THE COURT: All right. You just tell me that and we'll exclude that part of it and then -- we'll exclude people for that part of it. Let us know when you can reopen.

MR. CASSADA: Okay. Thank you.

LESTER BRICKMAN,
Being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CASSADA:

Q. Good morning, Professor Brickman. Would you introduce

Laura Andersen, RMR 704-350-7493

1 yourself to the court.

2 A. Yes. I am Lester Brickman.

3 Q. Where do you reside?

4 A. I reside in New York City.

5 Q. What is your profession?

6 A. I'm a law school professor.

7 Q. How long have you taught law?

8 A. Since 1965, that would make it 48 years.

9 Q. Would you describe your principal subjects that you teach
10 in law school?

11 A. Well, currently, and actually over a long period of time
12 I teach the first year course in contracts. I used to teach
13 legal ethics, renamed professional responsibility after the
14 Watergate era. I currently teach a seminar on selected
15 problems in professional responsibility and the legal
16 profession. I also teach land use planning.

17 Q. Would you please briefly describe your educational
18 background?

19 A. I attended Carnegie Tech, now called Carnegie Mellon
20 where I received a Bachelor of Science in 1961. I attended
21 the University of Florida law school and received a JD in
22 1964. And I attended Yale and took an LL.M in 1965.

23 Q. What is the basis for your experience in asbestos
24 litigation?

25 A. Well, I have conducted research and published scholarship

1 for at least the last 22, 23 years. I think I first started
2 to focus my scholarly attention on asbestos litigation around
3 1990.

4 Q. Were you appointed by the Administrative Conference in
5 early 1990s for leading a colloquy on proposing an
6 administrative alternative to litigation?

7 A. Yes. I was approached by the head of the Administrative
8 Conference, which is an agency in the executive office of the
9 President of the United States, which conducts -- conducted at
10 that time, again conducts colloquies on administrative law
11 issues.

12 At that time asbestos litigation was being regarded as an
13 elephantine mess, mass of cases. The request was that I
14 organize a colloquy, write a proposal for an administrative
15 resolution of asbestos litigation, which I did.

16 I selected the parties to attend to participate in the
17 colloquy -- colloquium. I selected a leading defense lawyer,
18 Andrew Berry. I selected a leading plaintiff's lawyer, Ron
19 Motley, a leading jurist, Jack Weinstein, a leading RAND
20 researcher, the head judge of the Administrative Courts of the
21 United States, and somebody from the AFL-CIO who was the
22 pointman on legislation being proposed in Congress, to take
23 asbestos litigation out of the courts.

24 The colloquy took place, and I arranged for the
25 publication of the papers that were presented at the colloquy

1 in a symposium issue of the "Cardozo Law Review", in which I
2 actually published two articles. One was my proposal, and the
3 second was my analysis at the time of what was going on in
4 asbestos litigation.

5 Q. Whatever became of your -- of the proposal that arose
6 from that colloquy?

7 A. Well, I think it generated some support in the House, but
8 it also generated a great deal of opposition from the
9 plaintiff's bar. And ultimately it went the way of many of
10 the -- let's say a plethora of proposals that had been
11 introduced over a long period of time to take asbestos
12 litigation out of the court, create an administrative agency
13 funded mostly by the defendants.

14 Q. Has most of your involvement in asbestos litigation been
15 as an academic?

16 A. Yes.

17 Q. Have you also, from time to time, been engaged to consult
18 parties or render opinions in asbestos litigation?

19 A. I've been retained on a number of occasions, several
20 occasions in asbestos bankruptcy proceedings. And I've
21 enumerated those in my report and I've also attached a
22 statement of qualifications as an exhibit to my report in
23 which I detail all of those attach -- all of those
24 representations or retentions, rather.

25 Q. You've testified before Congress before on asbestos

1 litigation?

2 A. Yes. I've testified on four occasions. First in 1991
3 with regard to the proposal that I had written for the
4 administrative conference before a subcommittee of the House
5 Judiciary Committee.

6 Then in 2004 I testified before another subcommittee of
7 the House Judiciary Committee on the administration of
8 asbestos bankruptcy trusts and asbestos bankruptcies.

9 In 2005 I testified before the Senate Judiciary Committee
10 on the Fair Act, that was also called the Hatch Act at the
11 time, which was a proposal to take asbestos litigation out of
12 the courts and create an administrative agency funded by the
13 defendants.

14 I testified about the mass filings of silicosis claims
15 about which I also wrote an article, and as well about
16 asbestos claims.

17 And finally I testified in 2011 before a subcommittee of
18 the House Judiciary Committee on how asbestos litigation was
19 affecting the economy and the legal system. In that testimony
20 I examined not only nonmalignant litigation but also malignant
21 litigation and its impacts and the role of the trusts in
22 asbestos litigation.

23 Q. And in your most recent testimony in 2011, that was
24 regarding what's called the FACT Act?

25 A. Yes. That was the name of the act that I believe has

1 been passed by the House Judiciary Committee and is now before
2 the House to make the trust claim process more transparent,
3 require trusts to publish information, I believe, quarterly,
4 about who has made claims, and what the disposition of the
5 claims have been, and the details of the claim in terms of
6 work sites and so on.

7 I believe it also has a requirement that plaintiffs in
8 the tort system identify which trust claims they have filed
9 and provides for sanctions in the event that those other --
10 those trust claims have not been identified in the tort
11 litigation.

12 Q. Who asked you to testify before that subcommittee?

13 A. I received an invitation from the chairman of the House
14 Judiciary Committee, Mr. Smith.

15 Q. Does the demonstrative on the screen summarize your
16 publications in the area of asbestos litigation?

17 A. Those are seven of the nine articles that I've published
18 on asbestos litigation. There are two others not listed which
19 dealt with more than just asbestos litigation. And so these
20 seven deal exclusively with asbestos litigation.

21 But in my CV which I've attached to my report, there are
22 two other articles that deal in a significant way with
23 asbestos litigation.

24 Q. Have your articles and testimony often been cited by
25 other academics, governmental agencies and courts?

1 A. Yes. My articles have been widely cited in academia, in
2 treatises, in case books, and by all levels of courts, state
3 and federal.

4 Q. In September 2011, the General Accountability Office
5 issued a report on asbestos trust. And in that report they
6 noted that we interviewed two professors of law who have
7 published and are well-known experts in the area of asbestos
8 litigation and bankruptcy trust. Were you one of the
9 professors who was interviewed by the GAO?

10 A. Yes, I was.

11 Q. How many times have you shared your knowledge of asbestos
12 litigation in courts?

13 A. I've testified at asbestos estimation trials on two
14 occasions, those are the top -- the bolded listings in the
15 Owens Corning bankruptcy and the Armstrong World Industries
16 bankruptcy.

17 Below the line are two other engagements I had as an
18 expert where I wrote expert reports, I was deposed, but I did
19 not testify at the trial.

20 Q. Have your opinions specifically been offered in asbestos
21 liability litigation in bankruptcy cases?

22 A. Yes. All four, I believe, involved estimation
23 proceedings.

24 Q. And one of those cases was the Armstrong World Industries
25 case?

1 A. That's correct.

2 Q. And Judge Eduardo Robreno wrote in that case,
3 "Dr. Brickman has been shown to be qualified as an expert in
4 the history of asbestos litigation. He has been studying in
5 the subject for 15 years, now 22 years. He has published at
6 least seven articles on the subject and has testified three
7 times before congressional committees on asbestos litigation
8 and asbestos bankruptcy, and has been qualified by at least
9 two federal judges as an expert on the history of asbestos
10 litigation. And has supplied a full and complete written
11 expert testimony in a third asbestos bankruptcy proceeding.

12 "Therefore, I think that under Rule 702 he is qualified
13 by virtue of skill, education, experience to aid the court in
14 this case."

15 Then he went on to say, "Secondly the opinions rendered
16 in the report appear to be reliable."

17 That's Judge Robreno addressing your expertise.

18 A. Yes. I might note that Judge Robreno went to become the
19 presiding judge at MDL 875, that is the asbestos MDL. That
20 due to his fine efforts, 40-, 50,000 of the pending claims
21 were dismissed because of the failure to provide adequate
22 medical support for the claims.

23 Q. Has your scholarship included research and writing on --
24 concerning the impact of bankruptcies on the witness testimony
25 in the tort system?

1 A. Yes, it has.

2 MR. CASSADA: Your Honor, we proffer Professor
3 Brickman as an expert in asbestos litigation, including
4 asbestos bankruptcy cases and asbestos trust.

5 MR. INSELBUCH: Voir dire?

6 THE COURT: Yes.

7 VOIR DIRE EXAMINATION

8 BY MR. INSELBUCH:

9 Q. Professor Brickman, I'm Elihu Inselbuch. I'm here on
10 behalf of the Asbestos Claimants. Good morning.

11 A. Good morning.

12 Q. Have you ever taught torts?

13 A. No.

14 Q. Trial practice?

15 A. No.

16 Q. Do you have any experience in the industry in industrial
17 hygiene, air samples, anything like that?

18 A. No.

19 Q. Can you testify to the dangers of asbestos product types?

20 A. I probably can, but I won't.

21 Q. On what basis would you testify? Would you be an expert?

22 A. No, I would not be an expert, that's why I wouldn't
23 testify.

24 Q. Since the year 2000, have you attended an asbestos tort
25 case?

1 A. Not since 2000. I've attended some earlier.

2 Q. Now you described to the court your areas of academic
3 interest. Did any of your papers deal with the issues that
4 are in play as between a mesothelioma claimant and a
5 mesothelioma defendant in the trial?

6 A. I'm not -- I don't understand the question.

7 Q. Let me try again.

8 Are you familiar with what, for example, a plaintiff
9 claims when the plaintiff who has mesothelioma sues a
10 defendant like Garlock?

11 A. Yes.

12 Q. And are you familiar with the defenses that Garlock
13 asserts?

14 A. Yes.

15 Q. Have you done any legal scholarship on those subjects?

16 A. I haven't published anything about Garlock. Of course,
17 I've addressed Garlock in my expert report quite extensively.

18 In my most recent House testimony, I got into the issue
19 of mesothelioma and how trust claims interact with tort
20 claims. And I have not focused in my scholarship on that
21 subject to this point.

22 I will be writing an article for the "Tulane Law Review"
23 at their request -- or their invitation, which is a symposium
24 issue in which I will be addressing the so-called transparency
25 issue to which is very much in accord with the testimony that

1 I will be giving today.

2 Q. The transparency issue, as you frame it, has to do with
3 whether or not tort system defendants have access to trust
4 filings by claimants?

5 A. Whether they have access to trust filings and to 524(g)
6 ballots and Rule 2019 statements.

7 Q. Correct.

8 A. And not only trust filings, but also the content of the
9 filings, not just the fact of filings.

10 Q. Have you done any scholarship on how that might matter in
11 the tort system or in the settlement process?

12 A. How what might matter?

13 Q. How whether or not these claims and materials are made
14 available to tort defendants, how that would have an effect on
15 the tort defendant's behavior? Have you written anything on
16 that subject?

17 A. I haven't published that, no. That's what I'm currently
18 working on for the "Tulane Law Report".

19 Q. When were you retained by Garlock?

20 A. I think sometime in 2011.

21 Q. Prior to that time were you familiar with Garlock's
22 defenses in the tort system?

23 A. No, not specifically.

24 Q. Do you know what they are now?

25 A. Yes.

1 Q. What are they?

2 A. Basically they're -- it's the chrysotile defense and the
3 low-dose defense.

4 Q. Right. And were you familiar with those two defenses
5 before you were hired by Garlock?

6 A. I was familiar with them generally, not in the context of
7 Garlock. I had heard of Garlock as a -- I had heard the
8 Garlock name. I knew the names of most of the major
9 defendants, but I did not specifically know what Garlock's
10 specific defenses were. That was not information that I
11 focused on at that time.

12 Q. Prior to being engaged by Garlock, did you know anything
13 about Garlock's litigation history?

14 A. No.

15 Q. Did you, prior to being engaged by Garlock, talk to
16 anyone with personal knowledge about why Garlock settled
17 cases?

18 A. No.

19 Q. Do you have any knowledge outside of the material you've
20 been supplied by Garlock's lawyers, as to what Garlock or its
21 counsel knew about any particular case?

22 A. No.

23 Q. Do you know what information Garlock attorneys had before
24 they prepared the memo -- the information that they presented
25 to you?

1 MR. CASSADA: Your Honor, I believe he's going
2 beyond voir dire to matters that are more to the weight of
3 Professor Brickman's testimony.

4 THE COURT: I think we ought to admit Dr. Brickman
5 and get on and let you cross examine.

6 MR. INSELBUCH: Your Honor, I appreciate this is a
7 bench trial, and you're going to wait until the end of the
8 case until you've heard everything to make decisions on this.
9 We would just make the point that we don't understand what
10 Professor Brickman's expertise is.

11 We'd make the point that whatever he knows about
12 this case he's learned from the Garlock's lawyers, and that
13 all he's really doing is offering an opinion that their
14 opinion is correct.

15 So with that, we'll leave it for the court.

16 THE COURT: All right.

17 BY MR. CASSADA:

18 Q. Professor Brickman, you have before you on the witness
19 stand there Debtor's Exhibit 0969.

20 A. Yes.

21 Q. Do you recognize that as a copy of the expert report
22 you've authored in this case?

23 A. Yes. It's a copy of my expert report including the five
24 exhibits that I attached.

25 Q. Does the report provide greater detail about your

1 research and opinions and citations to authority in evidence
2 regarding the subject you'll testify here today?

3 A. Yes, it does.

4 Q. Does your report set forth the materials you reviewed and
5 relied on in formulating your opinion?

6 A. Yes. I have one of the exhibits lists about 10 pages
7 of -- which are a list of the documents I consulted in the
8 course of writing my report.

9 Q. Does your report also contain further more detailed
10 information about your research, publications, and experience?

11 A. Yes, it does. One of the attachments, one of the
12 exhibits was a statement of my qualifications in which I
13 reviewed my experience with asbestos litigation with asbestos
14 scholarship, and I think that was sort of -- about a 10-page
15 exhibit, as well.

16 Q. Okay. Thank you.

17 MR. CASSADA: Your Honor, I have a copy of Professor
18 Brickman's report. We've already offered it in connection
19 with our *Daubert* motion. I would like to offer it on the same
20 basis the reports have been offered before.

21 THE COURT: All right.

22 MR. INSELBUCH: Are you offering it in general?

23 MR. CASSADA: I'm offering in connection with *the*
24 *Daubert* motion and for demonstrative purposes.

25 MR. INSELBUCH: I understand it will not be accepted

1 in evidence for anything except *Daubert* purposes?

2 THE COURT: Yes.

3 (Debtors' Exhibit No. 0969 was received into
4 evidence.)

5 BY MR. CASSADA:

6 Q. Professor Brickman, based on your scholarly research,
7 your knowledge, and experience in your review of the facts and
8 data in Garlock's case, do you have an opinion respecting
9 whether Garlock's settlement history in the five-year period
10 prior to its bankruptcy case provides a fair reflection of
11 Garlock's legal responsibility for mesothelioma claims?

12 A. Yes, I do.

13 Q. What is that opinion?

14 A. My opinion is that Garlock's settlement history in that
15 period prior to the bankruptcy filing is not an accurate
16 reflection of Garlock's liability, and that therefore in
17 assessing what Garlock will have to pay to the trust for
18 pending and future claims, reliance on that settlement history
19 would not result in accurate results.

20 Q. Could you summarize, briefly, for the court, the basis of
21 the opinion?

22 A. Yes. The core of my opinion is based on the results of
23 my research that lead me to conclude that those settlements,
24 as well as others, were affected significantly by plaintiff's
25 counsel strategy of suppressing evidence of non-Garlock

1 exposures in the cases filed against Garlock.

2 Q. Is it your opinion that all of Garlock's settlements were
3 infected with such nondisclosure?

4 A. No. I certainly can't extend my opinion to that extent.

5 My opinion's really focusing on the big dollar cases.

6 And the big dollar cases, as I see it, as well as the
7 nonmalignant cases that Garlock paid substantial funds to
8 settle, were what drove the bankruptcy.

9 Q. Now Professor Brickman, you've written extensively for
10 over a decade about an entrepreneurial model for asbestos
11 claim. Would you please briefly explain to the court what
12 this is?

13 A. Yes. Traditionally in personal injury litigation,
14 somebody is injured, gets treated by a doctor, and then may
15 consult a lawyer for -- to assess whether he has a claim
16 against somebody for damages.

17 Starting about the early to mid-1980s, a very noted
18 plaintiff's counsel came up with a better mouse trap, if you
19 will. His name was Dickie Scruggs, a name that most of you
20 know. And he invented what I call the entrepreneurial system.
21 And it consists of mass screenings, going out to get the
22 clients, rather than waiting for them to come into the office.
23 Mass screenings done at union halls, at strip shopping malls,
24 in a variety of places where a screening company brings in a
25 truck with a portable x-ray machine or machines and

1 administers x-rays on a mass basis.

2 A doctor who is a specialist in reading chest x-rays may
3 be present on the truck and reads the x-rays every 30 seconds
4 or every minute, or the x-rays are collected and sent to one
5 of these, what I call "litigation doctors" to read in their
6 offices. From what I observed the rate of reading of these
7 x-rays was sometimes 70, 80, 90 an hour, sometimes.

8 More and my research indicates that the doctor's x-ray
9 reads were not -- were invalid. That is to say, the
10 percentage of positive x-ray reads. By positive I mean that
11 they found fibrosis in the lung, consistent with asbestosis
12 was off the charts. My research indicated somewhere in the
13 range of 50 to 90 percent, which is far, far in excess of what
14 most medical studies have shown.

15 And in deed, there were seven clinical studies or their
16 equivalent in which the very x-rays that the litigation
17 doctors read were reread by neutral x-ray readers who mostly
18 found error rates in the 90 percent range.

19 Judge Janis Jack who presided over the silica MDL which I
20 probably will comment on shortly, found that Dr. Ray Heron,
21 for example, read 99 percent of the silicosis x-rays as
22 positive for silicosis having previously read asbestos --
23 x-rays taken for asbestos purposes, 96 percent positive.

24 When OSHA researchers, with regard to rubber
25 manufacturer's employees, found that when they reread x-rays

1 read by the plaintiff doctors as 60 percent positive, were
2 something like .2 percent positive.

3 So a core element, one of the core elements of the
4 entrepreneurial system is cadre of doctors who misread the
5 x-rays, to use the words of Judge Jack, "who manufactured
6 diagnosis for money."

7 Another part of the entrepreneurial system is the filing
8 of hundreds and thousands of claims in specified courts around
9 the country which were known for their pro-plaintiff
10 proclivities and resulting in many cases in courts
11 consolidating cases in ways that were very deleterious to
12 interest of defendants, deprived them of the opportunity to
13 really defend cases on their merits, resulted in strategies of
14 settlement -- inventory settlements by the hundreds and by the
15 thousands.

16 And perhaps most important for purposes of my testimony
17 today, was the way in which plaintiffs -- plaintiff's counsel
18 prepared plaintiffs and their witnesses to testify at
19 depositions.

20 As I report in my scholarship quite extensively, these
21 ways in which plaintiffs were instructed, included implanting
22 false memories as to what products they were exposed to, and
23 what products they were instructed not to say they were
24 exposed to. A variety of information of that sort which I
25 probably will comment on more shortly.

1 Q. When did you first raise concerns about the
2 entrepreneurial model and the questionable mass screenings
3 that you described?

4 A. Well, in my first major article on asbestos litigation --
5 it's one of the two articles I wrote for the administrative
6 conference, the one in which I dealt with asbestos litigation,
7 what I understood going on -- I had an inkling about what was
8 going on. It seemed pretty apparent to me. But I didn't have
9 enough information to reach a firm conclusion. That took a
10 number of years of extensive research reading hundreds and
11 hundreds of transcripts of proceedings of motion practice, of
12 expert reports, of transcripts, of hearings, deposition
13 transcripts, trial transcripts, et cetera.

14 And over that period of time, over a decade I came to the
15 firm conclusion that -- that these x-ray readings were indeed
16 manufactured for money. And to put it more bluntly, they were
17 fraudulent.

18 Q. I'm going to ask you more about this later, but it is
19 your opinion that some of the features of this entrepreneurial
20 model have carried over and persisted during the 2000s in
21 relation to claims filed by cancer claimants?

22 A. It is my opinion that some of the features of the
23 entrepreneurial system as I've described it, have been
24 incorporated into malignancy litigation.

25 Q. Were your concerns about the way that nonmalignant claims

1 were being pursued, were those concerns eventually confirmed
2 in a court of law?

3 A. In 2004 I published an article in a symposium issued on
4 asbestos litigation that appeared in the "Pepperdine Law
5 Review". And I laid out my -- the evidence that I was basing
6 my opinion on quite extensively. It was a quite long and
7 packed article with many, many, many footnotes, some of them
8 running on for pages.

9 And the opinions I offered, the conclusions I stated were
10 confirmed the following year when Judge Jack, Janis Jack of
11 U.S. District Court judge in Texas, was appointed to head the
12 silicosis MDL, MDL 1553. And she made findings that were
13 issued in a report in which she wrote the report for the
14 benefit of state courts. And Judge Jack was a former nurse
15 who was offended by what she saw, what -- that the doctors
16 were doing. She's married to a cardiologist. She has a
17 medical background, and that impelled her to write, I think it
18 was a 200-page report that largely confirmed my own findings
19 about the fraud that was taking place in asbestos litigation.

20 Indeed, as you have up on the screen, the last line, "it
21 is clear that the lawyers, doctors, and screening companies
22 were all willing participants."

23 Now of course she's talking about silicosis litigation
24 there. But she also added, "and the same thing applies to
25 asbestos litigation."

1 And indeed, I wrote an article immediately after Judge
2 Jack's opinion or report was issued, indicating how her report
3 applied, as well, to asbestos litigation. We had the same
4 lawyers. We had the same doctors. We had the same screening
5 companies. We had the same MO. Everything was the same. It
6 was the same osis. It was just the prefix that was different.

7 Q. Were the x-rays that were used in silica litigation the
8 same x-rays that were used to screen asbestos claims?

9 A. In order to gin up these fraudulent silicosis claims,
10 there were 20,000 filed in Mississippi and Texas, mostly, in a
11 very extraordinary necessarily short period of time, 10,000 of
12 which were in the MDL.

13 What the plaintiff lawyers and the screening companies
14 did was, that they took the persons who had they had filed
15 asbestosis claims for, and in many cases gotten paid
16 settlement monies and so on, they took those asbestosis cases
17 and retried them as silicosis case. As I said, just changed
18 the prefix, still the same osis.

19 And in some cases, the very same chest x-ray readers who
20 had read the x-ray as indicating consistent with asbestosis,
21 reread the same x-ray and said it's consistent with silicosis.
22 Leaving Judge Jack to inquire during the *Daubert* hearing that
23 she presided over -- an unprecedented *Daubert* hearing -- to
24 ask one of the doctors whether the silicosis had cured the
25 asbestosis, since the doctor no longer mentioned asbestosis.

1 It turns out that one of the doctors who has read the
2 most x-rays, Dr. Ray Heron was doing dual readings. He would
3 read one x-ray and write a report saying consistent with
4 asbestosis, and that would go to one law firm. And then he
5 would write a report at the same time saying consistent with
6 silicosis and that would go to another law firm which happened
7 to have been a captive -- an offset (sic) of the first law
8 firm I'm referring to, which I've written about extensively.
9 That's just some of the highlights of the silicosis fraud.

10 Were it not for Judge Jack's persistence in demanding
11 access to records that have never before been produced in this
12 litigation, that fraud would have succeeded, in my opinion,
13 and it would have been worth at least a billion dollars to the
14 plaintiff's bar.

15 So I think that she did a great service. One that I
16 think would rarely -- other judges would probably not have
17 done, simply because -- as I said, she wrote a report, not an
18 opinion. Because she concluded, correctly of course, that the
19 vast majority of the cases in the MDL had been improperly
20 removed from state to federal court where they were then
21 assembled into the MDL, and that therefore she did not have
22 jurisdiction. But she felt so angry at what she saw the
23 doctors were doing in this case, and she did see it because
24 she presided over these *Daubert* hearings extensively. And she
25 felt compelled to write a report so that state court judges to

1 who these cases would be going back to, would know the results
2 of her medical inquiries.

3 Q. Now Professor Brickman, we don't see many nonmalignant
4 claims filed these days, or at least in the years before the
5 petition.

6 Prior to Judge Jack's opinion, approximately how many
7 claims were being filed on an annual basis?

8 A. Well, the number kept increasing almost exponentially.
9 At its height, I think in 2003, I recall that there were over
10 100,000 claims filed with the Manville Trust. Of course those
11 claims were filed, the screenings that generated those claims
12 took place a year, two years, three years earlier.

13 But every year the number of claims being generated by
14 screenings, the number of non-malignancy claims were
15 increasing, because lawyers became aware that there was nobody
16 minding the store, so to speak. That they could say anything.
17 They could get away with anything, literally, because these
18 cases would not be tried. They would all be settled in
19 inventory settlements.

20 In fact, in some cases the payments were made even
21 without filing any claims. There was an arrangement between
22 the plaintiff's bar and some of the defendants that they
23 would -- the plaintiff's bar would simply present a list of
24 their inventory and the defendant would pay.

25 In any event, when Judge Jack issued her opinion present

1 in the courtroom -- conducted the proceedings, present in the
2 courtroom was an assistant U.S. Attorney from the Southern
3 District of New York, and on the basis of what occurred in
4 that courtroom and other basis, a grand jury was convened in
5 New York. Word got out, the "New York Times" wrote about
6 that. Judge Jack's opinion or report was widely cited, and
7 that scared off the plaintiffs' lawyers from conducting
8 further screenings.

9 In addition as I noted before, there was a change from
10 finding asbestosis to finding silicosis, and that was
11 motivated by concern by the screening companies and the
12 plaintiff lawyers doing screenings, that the so called Hatch
13 Act, named off Senator Orrin Hatch of Utah when he was
14 chairman of the Judiciary Committee had a good chance of
15 passing, and that was going to put the kibosh to asbestos
16 screenings.

17 Q. So I take it that the silica litigation never took off?

18 A. No, it did not.

19 Q. And the opinion and the proceedings in the silica
20 litigation had a profound impact on the nonmalignant claiming
21 practices that you described before?

22 A. As I indicated, it pretty much resulted in the cessation
23 of virtually all screenings.

24 Q. Now you mentioned that Manville -- the Manville Trust was
25 getting tens of thousands of these nonmalignant claims every

1 year. Were these claims also being presented to defendants in
2 the tort system?

3 A. Yes.

4 Q. What financial impact did the mass screenings have on
5 asbestos litigation?

6 A. It had a profound impact. It drove the bankruptcies in
7 the time period up through 2001, 2002. Ultimately the
8 malignancy claims would become the driving force.

9 But from let's say 1988 until 2002, 2003 the driving
10 force in asbestos litigation was nonmalignant claims. And
11 that -- it was the volume of these claims that drove the
12 dozens and dozens of bankruptcies including the nine
13 bankruptcies in 2000 and 2001 that are of great significance
14 with regard to this estimation proceeding.

15 Q. Let me ask you to look at the demonstrative. This is a
16 listing of the bankruptcy cases that were filed during the
17 decade of 2000s. You talked about the non-top tier
18 defendants. That's actually a term that we've used in this
19 case. I believe it was actually coined by the expert for the
20 committee in this case, a Dr. Mark Peterson.

21 Those claims in yellow, do you recognize those as the top
22 tier defendants?

23 A. Yes. I would agree with Dr. Peterson that those nine
24 including Turner, Newell and Federal Mogul, two of the
25 bankruptcies.

1 Q. How would you describe their role in asbestos litigation
2 at the time of the bankruptcies?

3 A. Up to the time of bankruptcies, those were the leading
4 defendants. They paid most of the money in compensation with
5 regard to the nonmalignant claims and malignant claims.

6 But the ratio of nonmalignant to malignant claims was
7 somewhere in the ratio of 9:1. Out of every 100 claims, 90
8 would be nonmalignant and 10 would be malignant, by and large.

9 And so, when these nine companies went bankrupt, Babcock
10 and Wilcox, I believe, in February of 2000, and then
11 Pittsburgh Corning in April, and then Owens Corning and Owens
12 Corning Fibreboard in October, and then Armstrong World
13 Industries, et cetera. Then you had the followups in 2001,
14 that took out from the tort system the main players and
15 payers. That had a profound effect on the companies that were
16 left in -- the solvent companies that were left in the tort
17 system.

18 Q. Let me ask you, why were these companies the main payers?

19 A. Because they produced products that had high percentages
20 of amphibole asbestos.

21 Q. Now, some of them, let's look at USG Corp, that produced
22 a joint compound that was otherwise highly friable. Did that
23 company receive a lot of claims?

24 A. Yes, absolutely yes. All of those companies received
25 tens of thousands of claims.

1 Q. Okay.

2 A. Well, actually in total, hundreds of thousands of claims.

3 Q. Now, we've got a list of bankruptcy cases here, and there
4 have been bankruptcy cases filed by asbestos defendants in the
5 past, hadn't there?

6 A. Yes, starting with -- Manville was the second bankruptcy,
7 but it was the big kahuna at the time, followed by several, I
8 think, a dozen or more leading up to this bankruptcy wave in
9 2000/2001. And then followed by quite a few other
10 bankruptcies as you show listed on the screen.

11 Q. Have there been anything like the magnitude of these
12 bankruptcy cases, the number and amount of compensation that
13 left the system at one time?

14 A. Well, the Manville bankruptcy might have been comparable,
15 because Manville was the key player at the time, again, in
16 terms of payments.

17 But I think this is -- these nine bankruptcies were --
18 had the most profound effect on asbestos litigation.

19 Q. You talked about them having an effect on the companies
20 remaining in the tort system. Would you describe that to the
21 judge?

22 A. Well, when these nine companies left the tort system, of
23 course ultimately they were going to be 524(g) trusts created,
24 but that would take three, four, five, six years, in some
25 cases even longer. And so there was a lean period from the

1 point of view of the plaintiff's bar, and they overcame that
2 leanness by targeting various solvent companies as replacement
3 funding entities, to continue the flow of funds to the
4 plaintiffs and the plaintiff's bar with regard to asbestos
5 claims.

6 Q. Let me go back to Garlock and the nonmalignant filings
7 that you've testified about.

8 Have you studied the impact of the mass screening of
9 nonmalignant claims on Garlock?

10 A. Yes.

11 Q. What have you found?

12 A. Well, first I found that -- that Garlock has paid out
13 somewhere in the range of 1.3, \$1.4 billion for asbestos
14 claims. And that of that, somewhere around \$1 billion of
15 that, in the range of \$1 billion was paid for nonmalignant
16 claims.

17 So the vast bulk of the money that Garlock paid out over
18 time, was for what I have termed "fraudulent", for the most
19 part, nonmalignant claims.

20 Q. Now the billion dollars with nonmalignant, does that
21 include legal fees as well?

22 A. Yes, it does.

23 Q. Okay. And so the 1.4, \$1.4 billion includes just
24 indemnity claims?

25 A. Just indemnity, yes.

1 Q. Okay. You use the word "targeted". What do you mean
2 when you say defendants were targeted?

3 A. Well, it refers to the process of -- the litigation
4 process where the plaintiff's bar focuses on a company and
5 decides to elevate that company's status in tort litigation.
6 They may expend more resources in ferreting out information.

7 But there's a variety of ways in which a company is
8 targeted. In my report I go in extensively into how Garlock
9 was targeted. And I won't go into it at this point, but it
10 certainly involves the suppression of exposure information,
11 particularly exposures by -- to products of Babcock and
12 Wilcox, and Pittsburgh Corning, and Owens Corning, and
13 Fibreboard, and Armstrong World Industries, and WR Grace, and
14 US Gypsum, and Turner Newell, Federal Mogul and GAF.

15 Q. Now, what has become of the top tier defendants and other
16 companies that file bankruptcy for bankruptcy relief in the
17 wake of those companies?

18 A. Well, ultimately they emerge from bankruptcy, ultimately
19 could be three, four, five, six, seven, eight years, having
20 formed 524(g) trusts with their assets, they emerge free of
21 any asbestos liability, and all asbestos claims that were
22 pending at the time of the bankruptcy and any future claims
23 based upon exposure to their products, are channeled to the
24 trust.

25 Q. And so have we seen a rather dramatic expansion to the

1 trusts system that existed prior to 2000?

2 A. Yes. There's been a dramatic increase in the number of
3 trusts, and in trust assets. According to the GAO report
4 issued last year, trusts have 37 -- there are 60 trusts now.
5 At least there were 60 then. They have about \$37 billion in
6 assets. And according to calculations that I did, and roughly
7 somewhere in the range of \$15 billion has been paid by trusts
8 since 1998.

9 Q. Do we now have a dual compensation system for asbestos
10 claimants?

11 A. Yes. We have two separate worlds with regard to asbestos
12 compensation, and particularly now with the demise, for the
13 most part, of nonmalignant litigation. This is largely
14 mesothelioma and lung cancer, but mostly mesothelioma.

15 What we have is the tort world, and then we have a
16 separate world called the trust the 524(g) bankruptcy trust,
17 which as I said have \$37 billion in assets. In 2007 and 2008,
18 I believe in those years or '9, were paying out \$3.5 billion,
19 \$3 billion a year, money of that magnitude in response to
20 claims made to the trusts.

21 Q. Would you describe that dual -- those two sides of the
22 compensation system as working in a coordinated fashion?

23 A. Well, it's coordinated in a way, it's coordinated by the
24 plaintiff's bar so they could file claims in the tort system,
25 and file inconsistent claims with the trust, and keep the

1 information about the inconsistent claims from being
2 discovered by defendants in the tort system.

3 Q. Can you describe for the court what relevance, then, the
4 entrepreneurial model you talked about before has to
5 mesothelioma litigation?

6 A. Well, as I mentioned earlier, one of the features of the
7 entrepreneurial system was the method of witness preparation.
8 And to illustrate this, in my Pepperdine article, I have an
9 extensive consideration of a memorandum produced by a young
10 lawyer at the law firm of Baron and Budd, inadvertently
11 produced. I've termed this "The Script Memo". And it details
12 how Baron and Budd paralegals prepared their plaintiffs for
13 depositions.

14 And, I mean, the details are quite graphic, telling them
15 these -- you know, these are all filled out by the paralegals.
16 It's a 20-page document which you have up on the board now
17 that says what products to name, what products not to name.
18 Instructions, don't say you saw any warning labels
19 instructions to don't say any percentages.

20 Instructions -- well some of the paralegals when
21 interviewed by a newspaper reporter, said that their function
22 was to implant false memories. That by the time they got
23 through with the clients, the clients named every product that
24 the firm wanted them to name, and failed to name every product
25 that the firm did not want them to name.

1 Of course the products that they didn't name were the
2 products of bankrupts, for the most part. And so the script
3 memo concludes with a -- what I consider a rather chilling
4 message.

5 It tells the client on page 20, I believe, of the script
6 memo at the very end, be aware that the lawyers deposing you
7 have no way of knowing what products you were exposed to.
8 Meaning, you can testify to anything and nobody can contradict
9 you.

10 MR. CASSADA: Your Honor, may I approach the
11 witness?

12 THE COURT: Yes.

13 MR. CASSADA: (Handing paper writing to the
14 witness.)

15 Q. Professor Brickman, do you recognize this as a copy of
16 Baron and Budd's script memo?

17 A. Yes, it is.

18 Q. Is Garlock mentioned by name in the script memo?

19 A. Yes on the very first page. The instruction in the memo
20 that's filled out by the paralegals, and given to the client
21 to memorize says, "the things you must be able to do by memory
22 at your deposition are", then it lists, one, two, three.

23 And the third one is, "know which names go with which
24 type of products, paren, for instance, Garlock made gaskets
25 and Kaylo made pipe covering, et cetera."

1 So Garlock was one of the names that virtually every one
2 of the plaintiffs would name. Here it is in big bold type,
3 literally, and singled out for specific attention.

4 Q. So Garlock was on the list of companies that should be
5 identified?

6 A. Well, it doesn't list it that way. Simply says, "know
7 names that go with which types of products."

8 But it lists Garlock -- there are very few companies
9 listed by name, Garlock is one of them.

10 Q. Okay.

11 A. This is on the printed part, not the filled in part.

12 Q. And then you describe the language in the memo cautioning
13 witnesses not to mention companies that weren't on their work
14 history sheets?

15 A. Yes.

16 Q. This is language to that effect?

17 A. That is, yes.

18 Q. And then you talked about the chilling -- you call it
19 chilling language to witnesses describing the ability of
20 defense lawyers to challenge their story?

21 A. Yeah, well, chilling to a reader. I understand the
22 purpose of that. I'll just read it out loud. "Keep in mind
23 that these attorneys are very young and were not present at
24 the job site you worked at. They have no records to tell them
25 what products were used on a particular job, even if they act

1 like they do."

2 And when you conjoin that with the newspaper accounts of
3 the interviews of former Baron and Budd paralegals and their
4 description of how they implanted false memories, you really
5 have the context with which to understand what that
6 statement's all about.

7 Q. How would a practice like this affect a defendant in the
8 tort system like Garlock?

9 A. Well, if the plaintiff in the tort system is asked in
10 interrogatories or responding to standing orders of courts or
11 CMOs to list all exposures that he's had other than to the
12 exposure to the product of the defendant or defendants.

13 And he answers that he was not exposed to any other
14 products or virtually no other products except Garlock
15 gaskets, as is in the case of -- in a number of cases I've
16 looked at.

17 Then the defendant is deprived of the knowledge of the
18 plaintiff's exposures. And then coupled with other testimony
19 that I will give about the TDPs, and how they are setup to be
20 part of that strategy of suppression of exposure information.
21 It shows you -- I mean, it provides a road map of how this
22 litigation is conducted.

23 Q. You described when Mr. Inselbuch was asking you
24 questions, Garlock having a low-dose defense?

25 A. Yes.

1 Q. So with the practices you described here, have any kind
2 of impact on that type of defense?

3 A. Well, when -- before the bankruptcy wave, Garlock would
4 typically be sued in the tort system along with many other
5 defendants. And in particular, the top tier defendants. And
6 Garlock would pay nominal amounts to get out of the
7 litigation. It rarely went to trial. And it rarely needed to
8 go to trial.

9 And Garlock's defense -- the low-dose defense was, here
10 you have a plaintiff exposed to unibestos produced by
11 Pittsburgh Corning. That has a very high percentage of
12 amphibole asbestos. And then you have -- it was exposed to
13 Kaylo, at the time owned by Owens Corning, and again, a very
14 high percentage, et cetera.

15 So Garlock would say -- would defend by saying, you know,
16 we're small potatoes here, maybe singular, we're a small
17 potato. The big exposures are to these other companies.

18 And when they would go to trial, rather than settle for
19 nominal amounts, they would win most of the trials. In fact,
20 the data I looked at showed that they had a 92 percent success
21 record before the bankruptcy wave. And then even in cases
22 that they lost, I remember in one case the jury assessed them
23 with 2 percent of the liability. So that was Garlock's
24 low-dose defense.

25 A Sixth Circuit case, a Sixth Circuit Court of Appeals

1 case details this defense in graphic terms, I think, the Sixth
2 Circuit reversed a jury trial finding in favor of the
3 plaintiff saying that, "to say that Garlock's product was a
4 substantial factor in causing the plaintiff's disease, when
5 the plaintiff had these all -- all these other exposures, was
6 like saying -- adding a bucket of water to the ocean would
7 materially increase the volume of the ocean."

8 Q. Now, beginning on page -- in paragraph 34 of your report,
9 you describe how trust distribution procedures have frustrated
10 defendants' access to evidence of exposure to the companies
11 that form trusts.

12 Would you describe -- generally describe this to the
13 court?

14 A. I'm sorry. Let me get -- you're talking about paragraph
15 34 of my -- okay. Thank you.

16 Well, I have done research on asbestos bankruptcy trusts,
17 how they're formed, the process of reorganization. By no
18 means am I a bankruptcy expert, but I do have at least a
19 working understanding of how trusts are created.

20 And my research indicates, and I've published this in one
21 or more articles, that the plan of reorganization in asbestos
22 bankruptcy is written pretty much exclusively by the
23 plaintiff's bar.

24 The leading plaintiff's firms constitute the asbestos
25 claims committee, the ACC here referred to as the committee.

1 They constitute the TAC, the Trust Advisory Committee, which
2 has the ability to prevent any changes in the TDPs, the Trust
3 Distribution Procedure proposed by the trustee.

4 Indeed, you can see from the uniformity of the trust that
5 had been formed, particularly in recent years, and the
6 uniformity of changes to the trust from trust, to trust, to
7 trust, that there is in essence a central control. And that
8 central control are the leading plaintiffs' firms.

9 Keep in mind, the TDPs are written by the plaintiffs'
10 lawyers to regulate how to -- how the claims they are to bring
11 are to be paid.

12 Q. You focus on a trio of TDP provisions in your report.
13 Would you describe those to the court?

14 A. Yes, there are three. There is the confidentiality,
15 there's the sole benefit, and there is the withdrawal
16 deferral.

17 And if you put those -- here we go. Okay. These are
18 three -- this is one of the three trust provisions that I
19 refer to in some -- extensively in my report as being part of
20 the strategy of the plaintiff's bar of suppressing access to
21 trust claims enabling plaintiffs to misstate in the tort case,
22 their exposures, to deny that they filed trust claims when in
23 fact they did, or when in fact their lawyers filed 524(g)
24 ballots, or when their lawyers filed 2019 statements.

25 Q. Let me interrupt you for a second, just for purposes of

1 clarification. You're speaking of section 6.5?

2 A. Yes, I'm speaking 6.5 what I call the confidentiality
3 provision, is one of the three provisions. And it is what it
4 says, that the trust has to preserve the confidentiality of
5 the claimant's submissions. And the trust is instructed to
6 resist any subpoena, and only to honor subpoenas issued by the
7 bankruptcy court.

8 In other words, this is making it much harder and much
9 more expensive for defendants in the tort system to access
10 trust claims. And makes it far easier for plaintiffs to deny
11 that they filed trust claims, even though they did, and
12 sometimes filed 10, 15 trust claims which they deny they ever
13 filed, and these were done even before the tort case was
14 brought. So this is delay, delay, delay, and also impose
15 costs.

16 And I dare say, and I don't have data to back this up,
17 but I would suggest that the cost to the trusts of resisting
18 the subpoenas has been substantial in terms of lawyer cost.

19 Q. Now is there anything wrong with a defendant like a
20 former reorganizing company and a plaintiff to agree they're
21 going to keep their settlements confidential?

22 A. No. In fact, that happens with some frequency. But in
23 that case when you have a tort case and there's a settlement
24 and it's "confidential", what's confidential is the amount of
25 the settlement.

1 The fact of the claim, the complaint and perhaps some of
2 the litigation material, is generally available to the public.
3 What's not available if the settlement is confidential, is the
4 amount of the settlement.

5 Here, what this provision provides, is not just that the
6 amount of the payment is confidential, but rather the entire
7 trust claim, everything that the claimant asserted with regard
8 to his exposure, a necessary exposure -- a necessary statement
9 in order to have a valid trust claim, all of that is
10 confidential. Who is it confidential from? It is from the
11 tort defendant. That's the purpose, in my judgment, of that
12 provision.

13 Q. Okay. Let me ask you to look at another provision you
14 talked about the sole -- I think you called it "The Sole
15 Benefit Provision". I've got here now on the demonstrative
16 now, Section 5.7 B3. This happens to be an excerpt from an
17 AWI Trust Distribution Procedures. Describe this provision
18 and the impact it has on tort claims.

19 A. This is a standard provision in trust. The fact that
20 this is AWI is not limiting. It is pretty much identical, if
21 not absolutely identical, except for AWI products operations
22 to most of the trust. And it looks innocuous on its face.
23 Why is there a problem with this? Let me explain how this can
24 work in practice.

25 Let's assume that a plaintiff sues a company in the tort

1 system, Garlock, or any other viable -- formally viable
2 Garlock. And in interrogatories the plaintiff is asked to
3 list all of his exposures.

4 And in places like Los Angeles and New York and Texas and
5 West Virginia and a number of other places there are CMOs, or
6 standing court orders requiring the plaintiff to list all of
7 his exposures. List all -- to list all of his trust claims.
8 Including in several instances, the trust claims he intends to
9 file.

10 Okay. So in the interrogatories and in the depositions
11 the plaintiff denies any exposure to AWI products. AWI then
12 settles the claim with the plaintiff on the basis of the
13 information available which is AWI is the only product that he
14 recalls that he was exposed to.

15 Then the plaintiff goes and files a claim with AWI, and
16 says I was exposed to AWI product, or maybe even filed a claim
17 before the tort case.

18 That provision reads that that is not -- the fact that he
19 denied exposure, it does not preclude the tort claim in any --
20 the trust claim in any way.

21 The fact that he did not identify the AWI product, "does
22 not preclude the claimant from recovering from the PI trust,
23 provided he otherwise satisfies the requirements of the PI
24 trust."

25 Q. Just to be clear when you were talking about the tort

1 system claim, you said that the plaintiff claimants focus
2 solely on AWI. Did you mean solely on the defendant in the
3 tort system?

4 A. Yes, I meant that. Thank you.

5 Q. Okay. Finally this is the third of the trio provisions
6 you describe, the withdrawal and deferral provision?

7 A. Yes. As I said, this is the third of the three TDP
8 provisions that I believe were added or amended in order to
9 further the strategy of suppressing the access to trust
10 claims.

11 Because trust claims have to be claims that are valid
12 under state law, all of the trusts have a statute of
13 limitations provision. This is a standard one.

14 Well, that part of it is not present here, but usually in
15 most of the trusts it's three years, but there are extensions
16 possible. And so -- three years from the time of knowledge of
17 the injury, et cetera.

18 And what it says is, that the claimant can file a trust
19 claim, and immediately defer it or withdraw it, and the filing
20 tolls the statute of limitations. It does not have to, if
21 it's deferred or withdrawn, does not have to include all the
22 details necessary for a trust claim.

23 But any trust claim necessarily states a claim of
24 exposure to the product. Section 5.7 of the TDPs states that
25 you -- that a trust claim to be valid, a trust claim must

1 allege -- I'm trying to remember the precise, credible and
2 meaningful exposure to the -- to the debtor's products. In
3 any event, so they can either withdraw it or defer it.

4 Now why would you have that kind of a provision? Again,
5 it looks a little bit innocuous. But in practice, here's how
6 it works.

7 The claimant files 13, 14, 15 trust claims, even before
8 filing the tort claim. Then he defers them or withdraws them.
9 So now he's tolled the statute of limitations. He preserves
10 his place in line in terms of when he gets paid, the FIFO
11 line. But when he testifies, when he is asked in
12 interrogatories and in depositions, did you file any trust
13 claims, he says, "no". And plaintiff's counsels argue, hey,
14 we didn't file any trust claims.

15 If it turns out in the relatively rare circumstances that
16 the defendant is able to find out about this, the plaintiff
17 counsel's argument is, we didn't file a trust claim. We
18 withdrew it. We deferred it.

19 So now you see it, now you don't. It's a trust claim and
20 then it instantly disappears off the record. I think that
21 speaks for itself.

22 Q. Professor Brickman, the trio of provisions, particularly
23 the confidentiality and sole benefit provisions, were those
24 standard in asbestos trusts prior to the second half of 2000?

25 A. Most of the trusts had a confidentiality provision, but

1 it was amended, and a lot of these provisions were added in
2 the 2006, 2007, 2008 period, which was a very meaningful
3 period, because that is the time in which the trusts started
4 to pay out big money, \$3 billion or more per year to trust
5 claimants.

6 Q. Now, beginning in paragraph 50 of your report, you
7 describe how the TDP had been used to frustrate defendants'
8 access to exposure. And I think you focus on a number of
9 cases outside of Garlock.

10 Do you have evidence that plaintiffs have actually used
11 these TDPs to suppress evidence against defendants other than
12 Garlock?

13 A. Yes. I have talked about a number -- I have described a
14 number of cases starting with the Kananian case at page 46 of
15 my report, but continuing thereafter, that illustrate in
16 practice these provisions are used by plaintiff's counsel to
17 justify the failure to identify trust claims, or to identify
18 524(g) ballots where they claimed exposure to certain products
19 which they denied exposure to in the tort claim.

20 And the same goes for 2019 statements where they alleged
21 exposure in those statements, but denied those exposures in
22 the tort claims.

23 Q. Can you describe to the court what happened in the
24 Kananian case?

25 A. Well, the Kananian case is the first case that sort of

1 blew open the -- what was going on in malignant asbestos
2 litigation. Let me just consult my notes.

3 So Mr. Kananian had contracted mesothelioma and -- which
4 was deadly. It's one of the most terrible diseases ever
5 manifested on this plant. You literally suffocate to death.
6 He filed or his counsel filed at least six different trust
7 claims. And an examination of those claims showed that they
8 were inconsistent with each other, that he had what I would
9 call a fungible work history. So the work history would
10 change for each of the different trust filings, so as to make
11 him eligible for trust compensation.

12 Now one of those trust filings was with the Manville
13 Trust. His counsel Brayton Purcell -- well, I jumped ahead of
14 myself.

15 Now after filing these trust claims, Brayton Purcell, Mr.
16 Kananian's counsel, filed a tort action against Lorillard
17 Tobacco Company in Cleveland, claiming that the Kent micronite
18 filter that had asbestos in it, was the cause of
19 Mr. Kananian's mesothelioma.

20 And in the course of discovery, the counsel and the
21 plaintiff denied having made any filing with the Manville
22 Trust. When the defendant on its own was able to find out
23 that such a filing had been made, he presented that
24 information to the court. The court found, among other
25 things, that there was no evidence that he ever come in

1 contact with Manville products.

2 But more importantly, because of the untruthfulness of
3 counsel for Kananian, the Ohio court ordered the Brayton
4 Purcell counsel to produce the Manville Trust filings, which
5 he essentially refused to do. And the court then ordered the
6 firm to produce internal emails about the Manville Trust
7 filing, and they found an email acknowledging that the claim
8 form was "entirely inaccurate."

9 So what happened next is to delete the inaccurate filing.
10 The Brayton Purcell counsel then submitted an amended claim to
11 the Manville Trust, but repeatedly denied doing so to the
12 court.

13 In the court's word, the counsel "continued deceit in
14 amended answers to Lorillard's interrogatories." Counsel also
15 denied that claim forms had been filed with other trusts, even
16 as Brayton Purcell and an associated firm had received monies
17 on behalf of Kananian from multiple trusts. Counsel also lied
18 when he stated that original claim forms had not been
19 submitted to the bankruptcy trust claiming that the forms were
20 unsigned."

21 When I say counsel lied, I'm citing the court. I'm
22 quoting the court. In fact these claims had been signed. The
23 Brayton Purcell counsel also denied having any control over
24 the law firm with which it was associated with in representing
25 Kananian, maintained ignorance about what that firm did with

1 the amended claim form.

2 But in fact, according to Judge Hanna "communication
3 between Brayton Purcell and the associated firm prove
4 otherwise."

5 The court said, "Blatantly counsel's representations were
6 false."

7 Brayton Purcell counsel also filed a false privilege log
8 to conceal his initial deception.

9 So there was fraud, rampant fraud in the Kananian case.
10 The Kananian case received a lot of notoriety. It was one of
11 the leading newspapers called the Kananian case one exposing
12 "one of the darker corners of tort abuse." And now I'm
13 paraphrasing, in asbestos litigation. Inconsistencies between
14 the allegations made in open court into our cases, and those
15 submitted to trusts set up by bankruptcy companies to pay
16 asbestos related claims.

17 An editorial in the *Wall Street Journal* found this to be
18 evidence of rampant fraud inherent in asbestos trusts.

19 Then an article the *Cleveland Plain Dealer* reported that
20 Judge Hanna's decision ordering the plaintiff to produce proof
21 of claim forms, "effectively opened a Pandora's box of deceit,
22 revealing that counsel presented conflicted versions of how
23 Kananian acquired his cancer."

24 So those are the essential facts of the Kananian case.

25 Q. Was Kananian, is that an isolated case?

1 A. Well, *Kananian* was the first case to gain national
2 notoriety for exposing the fraudulent practice of suppression
3 of evidence of product exposures in order to drive up
4 settlement costs of defendants, such as Garlock and other
5 viable defendants in the tort system. But by no means is
6 *Kananian* an outlier.

7 Q. Can --

8 A. I'm aware of --

9 Q. I'm sorry. Go ahead.

10 A. I'm sorry?

11 Q. I interrupted you. Aware of other cases that you can --

12 A. Well, I'm aware that there have been articles -- at least
13 one article in *Mealey's*, as I recall, in which one of the
14 leading plaintiff's counsel said that *Kananian* was essentially
15 one off. That there is just no evidence that -- of fraud
16 beyond *Kananian*. But in my report I go on to list a bunch of
17 cases which illustrate that *Kananian* is not an outlier. That
18 in fact it represents a practice that is prevalent in
19 mesothelioma litigation, at least in big dollar cases.

20 Q. I'm not going to ask you to describe all of those cases
21 this morning for the court. They're in your -- on your report
22 which I'm sure --

23 A. They're in my report at pages 47 through 57.

24 Q. Let me ask you to focus on a few cases though that may
25 implicate the TDP provisions described today.

1 You're familiar and you report on a case called Barnes
2 and Crisafi in New Jersey in 2012?

3 A. Yes.

4 Q. Now this is a case where the issue of deferral claims
5 arose?

6 A. Yes. Here is a case where represented plaintiffs for
7 deceased workers sued Georgia-Pacific, alleging that the
8 decedent's only known asbestos exposures were to
9 asbestos-containing joint compound manufactured by
10 Georgia-Pacific, and they denied filing any trust claims, and
11 denied that the decedents had any known exposures that would
12 support such claims.

13 But on the eve of trial Georgia-Pacific's lawyers
14 obtained information from the Manville Trust, that one of the
15 two plaintiffs had filed a trust claim. That information not
16 only contradicted the plaintiff's testimony, but also violated
17 the court's standing discovery order that trust claims be
18 disclosed and produced prior to trial.

19 The plaintiff's lawyers were a New Jersey firm, and they
20 said, we don't know about any trust claims, explaining that
21 their co-counsel, the Motley Rice firm was handling any claims
22 the two plaintiffs might have had against asbestos trust. And
23 the court ordered the New Jersey firm to contact Motley Rice
24 and find out whether they had filed trust claims. And it
25 turned out they had filed a slew of trust claims on behalf of

1 both plaintiffs.

2 And so when plaintiffs were -- plaintiff's counsel were
3 asked by the court, you know, to justify this misleading
4 statements, to justify their excuse for failure to identify
5 the trust claims, their argument was, well, they're not trust
6 claims, they were deferral claims".

7 Remember, that was third of the three TDP provisions that
8 I commented on.

9 So their argument, deferral claims aren't claims because
10 they were deferred. And the judge made short shrift of that.
11 He rejected that characterization categorically, saying that
12 was prejudicial to Georgia-Pacific, as indeed it was. He
13 continued the trial and reopened discovery to permit
14 Georgia-Pacific an opportunity to investigate exposure.

15 That's one example of several that I give to show how
16 these TDP provisions are used in practice.

17 Now Georgia-Pacific discovered that Manville filed a
18 trust claim. Had Georgia-Pacific not been able to find that
19 out -- and I dare say there are many, many, many mesothelioma
20 cases where the defendant does not find that out -- then this
21 fraud would have gone on uncovered.

22 Q. Now, are you familiar with a concept of a presumed work
23 site claim that claimants sometime file against trusts?

24 A. Yes.

25 Q. Have plaintiffs or their lawyers ever used the

1 designation of presumed work site to take the position that a
2 trust claim doesn't really evidence any exposure to the
3 product of the trust against whom the claim is made?

4 A. Yes, they have.

5 Q. Are you familiar with a case of *Stoeckler versus American*
6 *Oil Company*?

7 A. Yes, I am. I covered that at page 50 of my report.

8 Q. Would you briefly describe what happened in that case to
9 the court?

10 A. Well, this is a case brought by the firm of Waters and
11 Kraus. The defendants discovered that plaintiffs had failed
12 to disclose several claims they had filed against asbestos
13 trusts. And the Waters and Kraus disclosed for the first time
14 three days after commencement of the trial, that Mr. Stoeckler
15 had filed trust claims against Johns-Manville, Celotex,
16 Eagle-Picher and HK Porter Trust.

17 Indeed, Waters and Kraus filed several claims -- several
18 of these claims. And the way in which the Waters and Kraus
19 firm defended that -- there were two arguments they made. One
20 was, hey, it's not a claim because we only listed the site
21 where he worked.

22 So to explain what this is all about, every trust has a
23 provision, as I said earlier, Section 5.7 of the TDPs
24 requiring a claimant to show meaningful and credible exposure
25 to the debtor's product.

1 Now, the trust also indicate how that exposure can be
2 demonstrated, what the requisite ways that -- of doing -- or
3 the possible ways of doing so.

4 One would be, for example, an affidavit by the plaintiff.
5 If the plaintiff is deceased, it could be affidavits by
6 others.

7 And another way in which one can satisfy the requirement
8 of meaningful and credible exposure, is to list the work site
9 that is listed in the TDP as one where the debtor's products
10 were in use, based upon prior trials, et cetera.

11 So as a shorthand way of asserting exposure, you can say,
12 I was at a particular work site at a particular time period,
13 and that's listed in the TDP as being sufficient to state a
14 claim.

15 So that's a claim of exposure. The listing of the work
16 site is, I was exposed at that work site. No trust, I repeat,
17 no trust will pay a claim unless there is evidence of
18 exposure, or unless it's violating its own TDP.

19 Now, the court rejected this contention not surprisingly,
20 pointing out that trust forms Mr. Stoeckler submitted,
21 required the claimants to provide information regarding their
22 exposures to products, and that they had actually named
23 products to which they were exposed to.

24 But even if they hadn't named products to which they were
25 exposed to, if they filed a claim, it was an assertion of

1 exposure to that defendant's or to that debtor's products.

2 Now there was also in that same case, a claim by counsel
3 for Mr. Stoeckler, that the claimants had not signed the trust
4 claim. So therefore it wasn't really a trust claim. Or maybe
5 he argued -- rather he argued truthfully when he said he
6 didn't file the trust claim, because he never signed it.

7 And the court says to the counsel:

8 "Are you telling me that Mr. Stoeckler didn't authorize
9 this? Is this where you're going?

10 "Mr. Smith George: I am just telling you that he has not
11 seen them. I am telling you the truth.

12 "The Court: Okay. So did he or did he not authorize
13 this form being submitted on his behalf?

14 "Mr. Smith George: He's never seen these documents. He
15 has -- he was represented by counsel.

16 "The Court: That's not answering my question. And you
17 know where this goes, to the Code of Professional Conduct."

18 Then the Court says:

19 "Let's take a recess. Counsel, please see me in my
20 office."

21 Now there's no transcript of the continued proceedings in
22 chambers, but the court never reconvened the jury, and the
23 trial ended abruptly.

24 Q. Have you observed that there been other cases in which
25 you talked about this a little bit in the Barnes and Crisafi,

1 case, where the relationship between the law firms and
2 referral firms has frustrated defendant's ability to get trust
3 exposures and trust claims?

4 A. Yes. I described that in my report.

5 Q. And I note that in your report you describe *Brassfield v*
6 *ALCOA* case in which there's extensive discussion about how
7 trust claims weren't produced, and there was reference to a
8 referral firm that was called in to explain --

9 A. Yes.

10 Q. -- trust claims had been filed. Would you briefly
11 describe that situation to the court?

12 A. Okay. In the Brassfield case which is a 2005 Texas case,
13 defendants discovered just days prior to trial that the
14 plaintiff had made trust claims against a number of trusts,
15 and the claims had been filed by Edward O. Moody, M-O-O-D-Y,
16 PA, a firm that had referred the plaintiff to Waters and
17 Kraus.

18 Now Moody firm had withdrawn the Manville claim after the
19 trust offered to pay \$17,000 on the claim, later refiled the
20 claim.

21 Now Waters and Kraus had announced in open court that the
22 plaintiff had filed no trust claims. Denied having any
23 knowledge of the three trust claims filed by Moody. And so
24 the judge summoned Mr. Moody to court to provide information
25 regarding the claims. And there ensued some of the most

1 bizarre testimony I've read. And I've read a lot of
2 testimony.

3 Mr. Moody said when asked:

4 Why did you withdraw the Manville claim after Manville
5 agreed to pay you \$17,000?

6 Mr. Moody says, I have no idea.

7 Well, what other trust claims did you file?

8 I have no idea.

9 Well, can you access your records?

10 I don't know how to access the records, and the only
11 person who does isn't available.

12 So that was the sum and substance of Mr. Moody's
13 testimony. And the court continued the trial to provide
14 defendants the opportunity to investigate the trust claims.

15 Now, the Moody case is an example of what I call the
16 interfirm plausible deniability scenario -- strategy.

17 And the way this is -- the way this happens is, in many,
18 but certainly not all cases. The case is acquired by a firm
19 that does a lot of advertising. They're the ones that file
20 the trust claims, typically. They refer the case to a trial
21 counsel who handles the trial in the tort system. Who brings
22 the tort case and does the trial.

23 And so the initial firm, I'll call them the referral
24 firm, wants typically to file the trust claims as soon as
25 possible. Because A, money now is worth more money later.

1 B, trusts are reducing the percentages they payout.

2 Moreover, these referral firms typically know almost
3 instantly where they're going to file these trust claims.
4 They'll file, 15, 18, 20, 22, 24 trust claims. But sometimes,
5 and there's testimony that I refer to in my report, sometimes
6 they're instructed by the trial firm to delay filing the trust
7 claim until after the resolution of the tort case. And
8 there's some pretty candid testimony about, we do that to
9 maximize claim values.

10 So you have with the interfirm I-N-T-E-R, the interfirm
11 strategy, when sometimes as occurs -- and I've reported on
12 this in my report -- the referral firm has filed a bunch of
13 trust claims 8, 10, 12, 14, 15, without allegedly disclosing
14 this to the trial firm. When the plaintiff is asked in
15 interrogatories and depositions, did you file any trust
16 claims, he says, no.

17 And counsel argues in court to the jury that there are no
18 other exposures, and yet there have been 14 trust claims filed
19 already.

20 And then when somehow this comes out, counsel is asked,
21 and he said, I didn't know about any of these trust claims.
22 The referral firm never told me they were filing trust claims,
23 so I didn't know.

24 So this is what I call the plausible deniability
25 strategy. In my judgment, the credibility of "I didn't know"

1 is something less than perfect.

2 Now that's to be -- the interfirm strategy, also has a
3 counterpart in what I call the intra I-N-T-R-A firm strategy.
4 That's another case that I discuss in my report. And I'm not
5 sure that I should get into it at this point.

6 Q. Yeah. I think we'll take a break here shortly and then
7 I'll have you get into that after the break.

8 Before we do that, I want to ask you -- well, first, in
9 your opinion, the cases that you cite in your report, are
10 those isolated cases?

11 A. Well, I cite two sets of cases. One -- the five or six
12 cases that I listed in pages 47 to 57 of my report which are
13 non-Garlock cases. These are cases where the defendant was
14 able to find out, quite fortuitously from the defendant's
15 point of view, that the plaintiff had filed trust claims,
16 though denying that he had done so with counsel arguing that
17 they had not done so even though they had done so.

18 And in spite of the court standing court orders and CMOs
19 requiring the disclosure of all trust claims, not only those
20 filed, but in some cases those that they intend to file.

21 One counsel's argued, hey, I didn't list -- these trust
22 claims that I filed immediately after the tort claim, I didn't
23 intend to file them at the time of the trial. I anticipated
24 filing them, but I didn't intend to file them. That's how
25 counsel justified failing to adhere to the CMO in New York.

1 Q. Let me -- before we get into any of that, I want to ask
2 you about one more case --

3 A. Okay.

4 Q. -- and then I'll suggest that we take a brief recess and
5 continue the last part of your testimony.

6 You write in your opinion about the *Montgomery versus*
7 *American Steel and Wire* court case in Delaware before Judge
8 Peggy Ableman. Can you briefly tell the court about that
9 case?

10 A. Yes, I can. First of all Judge Ableman was the judge in
11 charge of asbestos litigation in Delaware. So she was quite
12 experienced with asbestos litigation.

13 And the Montgomery case started in June, 2009, June
14 Montgomery was diagnosed with pleural mesothelioma, and her
15 son hired a number of law firms to represent her. They hired
16 the law firm of Brent Koon, also hired a Florida firm, and
17 they also retained Delaware counsel, which then filed a suit
18 in Delaware on behalf of June and Arthur Montgomery -- Arthur
19 being her husband -- against 22 defendants alleging that
20 June's mesothelioma was caused by exposure to asbestos from
21 the products and/or conducts of the named defendants. In
22 other words, her exposure was derivative. It was not direct,
23 it was from her husband's work clothes rather than direct
24 contact with products.

25 Now Judge Ableman had set forth mandatory disclosure

1 obligations relating to bankruptcy trust claims to quote
2 disclosure requirements specifically made, "claims made to
3 trusts for bankrupt asbestos litigation defendants." But the
4 Montgomery plaintiffs failed to identify 20 bankruptcy trusts,
5 to which they had submitted claims through the Brent Koon law
6 firm.

7 Now in these claims the plaintiffs claim that June
8 Montgomery was exposed to asbestos solely through laundering
9 of her husband's work-products when he worked as an
10 electrician at a certain power plant.

11 Plaintiff's identified none of the 20 trusts to which the
12 claims had been submitted.

13 Now Judge Ableman said, well, on the basis of the
14 testimony, it's pretty clear, and other information, that she
15 was also asserting independent claims. That she had been
16 directly exposed to asbestos litigation, and had filed claims
17 based upon direct exposure, which she denied in discovery.

18 Compounding the deceit, and these are words that I'm
19 paraphrasing from Judge Ableman, but I'll provide quotes,
20 plaintiff specifically denied submitting claims to many
21 trusts.

22 And this fraudulent scheme was exposed, because in the
23 words of Judge Ableman, "Foster Wheeler, one of the named
24 defendants, was aware of other cases where lawyers
25 representing asbestos claimants had submitted conflicting work

1 histories to multiple trusts, and filed a motion in advance of
2 trial, requesting that the court order disclosure of all
3 pretrial settlements including monies received from bankruptcy
4 trusts."

5 Now counsel for plaintiffs said that no bankruptcy
6 submissions had been made, and no monies received. But two
7 weeks -- two days before a two-week trial was to commence,
8 plaintiff's counsel reported that his client had received two
9 bankruptcy settlements of which he was previously unaware.
10 And the following day the defendant learned that in fact 20
11 bankruptcy trust claims had been submitted. And Judge Ableman
12 said "The core of this case has been fraudulent".

13 She characterized what she had observed in this case, and
14 I think it bear emphasis. This she said, "Is dishonesty at
15 its highest level." That's from a transcript of the
16 proceedings. "This is trying to defraud. It happens a lot in
17 this litigation". Let me repeat that for emphasis. "It
18 happens a lot in this litigation".

19 Now Judge Ableman went on to testify in Congress about
20 this case. And I describe her testimony in my report. And
21 she uses words just as strong as those that I've quoted her as
22 using in the transcript of the proceedings.

23 Q. You use a term in your report to describe the practice of
24 filing claims in the tort system and inconsistent claims in
25 trust, you call this double dipping?

1 A. Yes.

2 Q. Would you explain what you mean by that?

3 A. Yes. Simply, it's filing a tort claim, and denying any
4 other exposures, except that of the defendant or defendants
5 and perhaps one or two other exposures. But denying all of
6 the exposures to the major trusts to the debtors that had
7 filed the major bankruptcies.

8 And then either before or after, or both, before and
9 after the tort claim is litigated, filing trust claims,
10 receiving substantial funds that directly -- where there are
11 exposures claimed that directly contradict the testimony, the
12 interrogatories, the deposition testimony, the trial testimony
13 of the plaintiff, and the argument of plaintiff's counsel.

14 MR. CASSADA: Your Honor, this might be a good time
15 to break, because we've got a very short session left where
16 we're going to talk about Garlock's experience.

17 THE COURT: We'll take a 10-minute break. Come back
18 at 5 minutes to 11:00. When we come back, we will close the
19 courtroom to anyone who has not signed a confidentiality
20 agreement, until such time as we get through with those
21 matters. Thank you.

22 (A man stands and speaks from the back of the
23 courtroom.)

24 MR. KIM: Excuse me, Your Honor. My name is Tom Kim
25 reporter for Legal Newslane, request that the hearing be

1 waived or a party representing a (inaudible) to come and argue
2 that the hearing should remain open.

3 THE COURT: No, we have overruled those objections.
4 We shall continue on as I said.

5 (A brief recess was taken in the proceedings at
6 10:45 a.m. Court resumed at 10:58 a.m.)

7 THE FOLLOWING OCCURRED IN CLOSED SESSION:

8 THE COURT: Okay. When you are ready to proceed.

9 MR. CASSADA: Thank you, Your Honor.

10 Q. Professor Brickman, we now turn our attention to --

11 MR. INSELBUCH: Your Honor, before we begin, I would
12 ask you once again make sure the courtroom's been cleared.

13 THE COURT: Nobody should be in here unless they
14 have signed a confidentiality agreement. Is there anybody
15 here who has not signed or not subject to the confidentiality
16 agreement?

17 MR. CASSADA: Your Honor, we believe there are a lot
18 of company folks on this side of the room. They have -- we
19 believe they are all bound by the agreement. The agreement
20 has been signed by all parties including Garlock parent
21 corporation.

22 MR. INSELBUCH: We have no problem with that, Your
23 Honor, we just want to make sure.

24 THE COURT: Everybody's got a tie.

25 MR. CASSADA: Thank you.

1 Q. So Professor Brickman, we now turn our attention to
2 Garlock's experience in this area. Now you -- your report in
3 Section capital roman numeral IV, beginning at paragraph 64,
4 addresses the discovery that Garlock's obtained in this case.
5 And what it shows as it relates to plaintiff and counsel
6 suppressing evidence of plaintiff's exposures to the products
7 of companies in bankruptcy and cases against Garlock; is that
8 correct?

9 A. Yes, it is.

10 Q. So turning to Garlock's situation, is there evidence that
11 plaintiffs in cases against Garlock told different stories
12 about their exposures to Garlock on the one hand, and to the
13 products that were covered by trust on the other?

14 A. Yes.

15 Q. Can you summarize that evidence or give -- and/or give
16 some examples of it?

17 A. Well, to introduce it, as I said starting in paragraph 68
18 of my report, the evidence I review shows significant
19 discrepancies between the work history plaintiffs' described
20 to Garlock in discovery in the tort cases, and the work
21 history they use to sustain their trust claims.

22 Now there are a variety of cases that I consider, just
23 speaking broadly for the moment, one plaintiff in the tort
24 system claimed he was only exposed to asbestos through his
25 father's work clothes. After he had already executed an

1 affidavit, that was unbeknownst to Garlock, attesting to
2 regular exposure to asbestos during his own employment in the
3 Air Force, and that was the Massinger case.

4 Another plaintiff in a declaration attached to a trust
5 claim, attested to personally removing and installing pipe
6 insulation when he had denied ever seeing such activity when
7 deposed by Garlock in the tort system. That was the Ornstein
8 case.

9 Yet another plaintiff's claim form stated that he
10 regularly handled raw asbestos fibers, when in the tort case
11 against Garlock, he said that the only asbestos products he
12 ever handled were Garlock's gaskets. That was the Torres
13 case.

14 The plaintiff who obtained the largest award -- jury
15 award against Garlock in its history, not only asserted over a
16 dozen trust claims based on exposures, never disclosed in tort
17 discovery, but also based a number of the claims on asbestos
18 exposure in the shipyard construction repair industry at a
19 shipyard. But in the tort case against Garlock, he claimed
20 that he never went on board a ship and only did classroom work
21 at Mare Island where he was stationed. That was the Treggett
22 case.

23 I can go on, but that gives you the flavor, generally
24 speaking, of these 15 designated plaintiff cases. I might --
25 I should add by way of introduction, that Garlock did

1 discovery and identified -- identified 15 plaintiffs which it
2 designated as plaintiffs in this case that it would be
3 focusing on. And so I'm now referring to one or more of these
4 designated plaintiff cases.

5 Q. Okay. And you talk about the Treggett case. You also
6 talk about the Torres case. Is that case one -- is that the
7 largest verdict obtained against Garlock in the five years
8 before this case?

9 A. Yes, it is.

10 Q. At least the largest verdict hasn't at least as of yet
11 been over turned on appeal.

12 A. That's my understanding.

13 Q. In paragraph 69 of your report you describe how
14 plaintiffs' firms take positions in bankruptcy cases to
15 prevent discrepancies from being discovered. What do you mean
16 about that?

17 A. Well, there are various strategies that plaintiffs'
18 counsel use in order to keep the two compensation worlds
19 separate. I mean they try to erect a force field that
20 prevents defendants, such as Garlock, in the tort system, from
21 accessing the trust claims that they have filed, or the 2019
22 statements, or the ballots, in which they assert exposures
23 which they have deny in the trust system and -- in the tort
24 system. And these denials are in the interrogatories, they're
25 in the depositions, they're in trial testimony by the

1 plaintiff, and by -- in the argument by counsel in trials.

2 Q. Now you've described earlier to the court, and I believe
3 you address in paragraph 73 of your report, how some law firms
4 structure their internal procedures to avoid pretrial
5 discovery of trust fund.

6 A. Yes. As I testified before the break, you have these two
7 different strategies, they're related. But what I call the
8 interfirm strategy, where the trial firm claims not to know
9 that the referral firm has filed trust claims. Claims not to
10 be in on that, so as to have plausible deniability.

11 I also describe the intra-firm strategy. Now here I will
12 go into more detail in one of these cases of the intra-firm
13 strategy as described by Mr. Shein of the Shein law firm in a
14 deposition.

15 In here the trial counsel denied any exposures, but the
16 intake counsel of the firm had filed trust claims. Now this
17 was within the same law firm. And Mr. Shein, as I think will
18 be demonstrated shortly, said in his testimony, in his
19 deposition testimony, that he would not expect the trial
20 counsel to be aware that the intake counsel had filed trust
21 claims. This is within the same firm.

22 And why not? Because that's how he maximized claim
23 values. That's our purpose. We maximize claim values for our
24 clients. And one of the ways in which we do so is within the
25 firm we have this Chinese wall that separates the intake

1 counsel from the trial counsel. So that the trial counsel can
2 honestly say that he wasn't aware of trust claims.

3 And so that the plaintiff can deny that he filed trust
4 claims even in circumstances where he signed, in one case, 14
5 affidavits prior to his testimony, 14 affidavits of exposure
6 to materials that were the subject of trust claims. And
7 counsel backed up those denials.

8 So this is a strategy, the intra-firm strategy that is
9 used by some of the firms in order to suppress the defendant's
10 ability to acquire information about other exposures.

11 Q. So let me -- you were talking about the Golini case?

12 A. Yes, I am talking about the Golini case.

13 Q. That's the case where the intake lawyer drafted and had
14 Mr. Golini sign 14 affidavits attesting to exposure to trust
15 products early in the case?

16 A. Earlier in the case, yes. Early in the tort case.

17 Q. And did -- was it after that that they actually filed a
18 lawsuit for Mr. Golini?

19 A. Yes. The affidavits were signed prior to the lawsuit.

20 Q. Were they signed prior then, I take it, to the
21 interrogatory answers that --

22 A. Yes, they were signed prior to discovery.

23 Q. What if anything did the interrogatories say about
24 Mr. Golini's exposure --

25 A. Denied all the -- denied other exposures and was Garlock

1 only, as I recall.

2 Q. Okay. And this is what -- when Mr. Shein was asked
3 whether the trial in discovery counsel knew and talked with
4 the lawyer who drafted the affidavits, this is that testimony?

5 A. Yes.

6 (Video playing.)

7 (Video stopped.)

8 Q. In paragraph 71 of your report, you describe the
9 relationship between referral firms and trial firms and how
10 sometimes that relationship is organized in a way to prevent
11 the discovery of trust claims and the exposures supporting
12 those trust claims?

13 A. Yes.

14 Q. So did you find evidence in the cases against Garlock
15 that firms, in fact, did structure their relationship with
16 referral firms in such a way in order to evade the discovery
17 of trust claims?

18 A. Yes, I did. I reported on that in my report.

19 Q. And you're familiar with the Homa case?

20 A. Yes.

21 Q. And that's the case where the trust claims were filed the
22 day after Garlock settled the claim?

23 A. Yes.

24 Q. Who was the referral firm in that case?

25 A. The David firm.

1 Q. Now, in New York is there any kind of special provision
2 that requires the disclosure of trust claims before trial?

3 A. Yes. New York has a standing order requiring the
4 plaintiff to disclose all trust claims, in some cases 90 days
5 before trial. And in addition, all trust claims that the
6 plaintiff intends to file.

7 Q. Okay. So in Homa, did the 90th day before the trial come
8 and go?

9 A. Yes.

10 Q. Were any trust claims disclosed?

11 A. No.

12 Q. Is this testimony by the trial firm and the referral firm
13 describing what happened in that case and why the claims
14 weren't disclosed?

15 A. Yes.

16 (Video playing.)

17 (Video stopped.)

18 Q. And the David firm, Mr. Cooper, talking about the same
19 trust claim?

20 A. Yes.

21 (Video playing.)

22 (Video stopped.)

23 Q. Now you also talk about the deferral claim provision?

24 A. I'm --

25 Q. You talk about the deferral provision?

1 A. Yes.

2 Q. And how that provision is sometimes used to evade the
3 disclosure of the trust claim?

4 A. Yes, I did.

5 Q. Did you find whether that provision had been used in
6 cases against Garlock to evade the disclosure of claims the
7 evidence -- the trust claims and the evidence supporting it?

8 A. I did so find.

9 Q. Now is one example of that case the Torres case?

10 A. Yes.

11 Q. And that's the case where the Texas firm, Williams
12 Kherkher got a big judgment against Garlock several months
13 before the bankruptcy case?

14 A. Yes.

15 Q. Now in that case did the plaintiff file a claim against
16 Babcock and Wilcox?

17 A. Yes the day before his deposition he filed a claim with
18 Babcock and Wilcox and then at his deposition when asked about
19 whether he was exposed to any Babcock and Wilcox product said
20 he never heard of the company.

21 Q. Okay. And do you know whether his trust claim was ever
22 paid?

23 A. Yes, it was paid.

24 Q. And do you know whether the Williams Kherkher firm or
25 plaintiff, otherwise disclosed that trust claim and any

1 exposure underlying it in the tort action?

2 A. This claim was filed in Texas, and Texas has standard
3 interrogatories asking about any trust claim that was or will
4 be made. No trust claims were -- forms were offered in
5 response to the standard request for production of the claim
6 forms.

7 And indeed, as I recall, the -- on the question in the
8 interrogatories about, list all the trust claims, the answer
9 was, "not applicable".

10 Q. Well, this is a clip that shows how Mr. Chandler
11 described that trust claim and why it wasn't disclosed.

12 A. Yes.

13 (Video playing.)

14 (Video stopped.)

15 THE COURT: Mr. Cassada, some other people have come
16 in. I don't know if you all know the individual.

17 MR. CASSADA: I don't know.

18 THE COURT: Okay.

19 MR. CASSADA: I think one is Mr. George.

20 THE COURT: Okay. No, I know him. All right.

21 MR. INSELBUCH: Should we identify the people that
22 just entered.

23 THE COURT: The guy in the very back, light coat. I
24 can't see that far, very well, actually.

25 MR. INSELBUCH: Will the people that just entered

1 the courtroom identify themselves.

2 MR. PATTERSON: Yes. I'm Bob Patterson, I'm
3 employed by the Special Master of Bankruptcy Court.

4 MR. CASSADA: I think the order permits court
5 personnel.

6 THE COURT: Yeah. One of the young women on your
7 side.

8 MR. INSELBUCH: She's in our firm, Your Honor.

9 THE COURT: All right. Good. You all -- you all
10 probably ought to look out after that. I can't police it very
11 well.

12 MR. CASSADA: Okay.

13 THE COURT: Go ahead.

14 BY MR. CASSADA:

15 Q. Yes. And we have a clip -- the bankruptcy department in
16 Williams Kherkher term, a gentleman by the name of Charles
17 Finley who testified about the basis for the trust filed
18 against Babcock and Wilcox.

19 (Video playing.)

20 (Video stopped.)

21 Q. Now, Professor Brickman, you understand that Garlock
22 received full discovery in only 15 of the cases against it?

23 A. Yes, I understand that.

24 Q. Okay. Did you satisfy yourself that there was sufficient
25 evidence in the record to show that these types of practices

1 were systemic in Garlock's high value cases?

2 A. Yes. The evidence I received with regard to the 15
3 cases, supplemented by the depositions of the six counsel,
4 some of which have been displayed on the screen, about the
5 pattern of practices supplemented by other information, in
6 particular, some research done by Dr. Bates in his rebuttal
7 report where he disclosed that -- or stated that prior to the
8 bankruptcy wave in the RFA -- in 200 RFA cases, that's the
9 Request for Admission Cases, prior to the bankruptcy wave,
10 22 percent of the exposures were not disclosed. But
11 subsequent to the bankruptcy wave, that number tripled.

12 In the case of, I think, Pittsburgh Corning, it
13 quintupled. That is, the percentage of nondisclosures
14 pre-bankruptcy wave, versus the percentage of
15 non-bankruptcy -- nondisclosures post-bankruptcy wave.

16 And that information I regarded as evidence of the
17 strategy of suppression of evidence of non-Garlock disclosures
18 being implemented in the post-bankruptcy wave.

19 So there were a variety of -- there was a variety of
20 information in addition to the facts of the 15 cases that went
21 into my opinion.

22 Q. Would you describe for the court the source of the
23 evidence that you received, reviewed and considered in
24 connection with 15 cases?

25 A. Yes. After learning about the 15 cases and having

1 discussions with you and other members of the Robinson firm
2 about the cases, I realized that I needed to have a lot more
3 detail about the cases that for myself to read all of the
4 underlying documents would take scores and scores of hours.

5 And so I asked the Robinson firm to prepare a summary of
6 the facts in those cases, and I emphasized in my request what,
7 I call my Joe Friday request I just wanted the facts, nothing
8 else. No analysis. Just what happened, what the exposures
9 claimed. And I want the documentary evidence supporting each
10 and every fact in that preparation -- in that report. And
11 this was supplied to me in the form of a report dated
12 April 12th, 2013 which I have appended as Exhibit E to my
13 report.

14 Q. Did you also get copies of depositions of the law firms
15 that were deposed?

16 A. I got copies of the depositions. I got electronic copies
17 of all of the materials listed in that report.

18 Q. Did you get copies of all the trust claims that have been
19 discussed in the cases and are at issue?

20 A. Yes, I had both. In some cases I had paper copies, and
21 other cases I had electronic copies.

22 Q. Did you spend sometime with the memorandum checking the
23 sites and looking at underlying documents?

24 A. Yes. I methodically went through and sampled some of the
25 voluminous material to satisfy myself that the factual record

1 that had been supplied to me was accurate.

2 And I satisfied myself that it was -- I found some
3 quibbles in it in some places, but nothing that would affect
4 my opinion. And so I did in fact satisfy myself that the
5 underlying documents did support the statements, the factual
6 statements in the April 12th memo.

7 Q. Is April 12th memo attached to your report as an exhibit?

8 A. It's Exhibit E to my report.

9 Q. Did you rely on other memoranda drafted by the Robinson,
10 Bradshaw and Hinson?

11 A. Yes. There were I believe the -- there were three in the
12 list of materials that I considered, which is Exhibit A at
13 page two of that list. I list three other memoranda that I
14 considered, one of February 8th, 2013 from the Robinson firm
15 to Bates White. Subject: Partial summary of cases where
16 exposure information used to support trust claims or
17 bankruptcy filings was not disclosed.

18 In addition, a February 11, 2013 memorandum from the
19 Robinson firm to Bates White. Subject: In Re: Garlock
20 Sealing Technologies Trust Distribution Procedure summary.

21 And finally, another document dated February 11, 2013
22 which was a memorandum from the Robinson firm to Bates White,
23 dealing with voting procedure and ballot certification
24 summary.

25 Q. Did you receive supporting documents for any of those

1 memoranda?

2 A. Yeah. I received supporting documents for all of those
3 memoranda.

4 Q. Did you review the underlying supporting documents?

5 A. I reviewed some of them, yes.

6 MR. CASSADA: Your Honor, I'll pass the witness.

7 THE COURT: All right.

8 MR. INSELBUCH: Your Honor, is it all right if I do
9 it from here?

10 THE COURT: Yes. You can do it sitting down if you
11 want to.

12 MR. CASSADA: I have a number of documents to
13 introduce. I'll be happy to do it now or -- they're the
14 documents that Professor Brickman has testified about.

15 THE COURT: Okay.

16 MR. INSELBUCH: I trust not his report.

17 MR. CASSADA: Already moved. The admission of his
18 report has been accepted for limited purpose.

19 MR. INSELBUCH: Yes.

20 MR. CASSADA: Yes.

21 MR. INSELBUCH: You're not going to move beyond that
22 report.

23 MR. CASSADA: No.

24 THE COURT: All right. Go ahead.

25 CROSS EXAMINATION

1 BY MR. INSELBUCH:

2 Q. Let's get some of the underbrush out of the way first.
3 Let's talk about the so called script memo.

4 With all of your research and scholarship and all the
5 work done by defendants' lawyers across the country about this
6 thing, have you ever identified one plaintiff who was shown to
7 prepare to testify using the script memo?

8 A. As I sit here today, I have a vague recollection that the
9 script memo was turned over in the course of the case. And
10 that there were in fact cases at least in -- there were cases
11 in which the script memo was used, and that came out in a
12 court proceeding. And I have disclosed that or stated that in
13 an article that I published.

14 Q. So the answer's, no, you can't identify one witness?

15 A. No, the answer is yes I can.

16 Q. Who --

17 A. I did identify --

18 Q. -- is your --

19 A. -- I identified the cases in which the script memo was
20 used and that is in one of my published articles.

21 Q. Can you tell us which article and where?

22 A. It was the article that I -- that was published in the
23 *Pepperdine Law Review*. If you want, I'll look at my CV and
24 give you the title.

25 And there is a rather lengthy part of that article

1 dealing with the Baron and Budd script memo.

2 Q. I know that, but I'll ask you again. As you sit here
3 today, can you name me one person who has been shown
4 testified, as you sit here today, testified after being
5 prepared with this?

6 Surely if you could do that, you would have been prepared
7 to do that today?

8 A. No, I wouldn't.

9 Q. I see. And you mentioned the grand jury was convened in
10 New York County, do you remember that?

11 A. In the Southern District.

12 Q. Southern District New York. Was anyone indicted?

13 A. No.

14 Q. Was anyone ever sanctioned by a court or by any ethics
15 facility with respect to this memo?

16 A. There were determinations by some judges, one called as a
17 "cancer on the profession". Another said that the privilege
18 was -- the claimed attorney/client privilege was pierced
19 because of the crime fraud exception. As I relate in my
20 report, that holding was reversed on appeal, with the
21 appellate court determining that the crime fraud exception
22 only applied when the client proposed a fraud to the lawyer,
23 but didn't apply when the lawyer proposed to the client to
24 do -- to accomplish a fraud.

25 With regard to the judge who called the script memo a

1 cancer on the profession, or words to that effect, he was
2 defeated for reelection, and Baron and Budd spent heavily on
3 that election.

4 Q. Only the plaintiffs spent on the elections.

5 I would still like to ask you the question --

6 A. Was that a question?

7 Q. -- was anybody ever sanctioned?

8 A. I think the lawyer who raised the script memo was heavily
9 sanctioned.

10 Q. By what court and what was his name?

11 A. There were courts all over the state that Baron and Budd
12 filed sanctions motion against William Skrepnick, one of the
13 three lawyers that sought discovery of this script memo.

14 Q. Who sanctioned this Mr. Skrepnick?

15 A. Various courts around the state. I think there were --

16 Q. Was there any sanction --

17 A. -- Baron and Budd brought sanction motions in at least 30
18 or 40 courts, maybe 50 courts around the state.

19 Q. Was there any sanction ever addressed to the firm of
20 Baron and Budd?

21 A. I'm sorry?

22 Q. Was there any sanction ever addressed to the firm of
23 Baron and Budd?

24 A. As I said in my report exactly, there were no sanctions.

25 Q. Somewhere earlier today you said that the distribution of

1 the claims between the non-malignants and the malignants was
2 something like 90 to 10, and that it was the nonmalignant
3 claims that drove the bankruptcies in the early 2000s --

4 A. Yes.

5 Q. -- do you remember the testimony?

6 Well, the numbers were 90 and 10, but was that the values
7 of the claims as against those entities that filed?

8 A. No. But the --

9 Q. It was the other way around, wasn't it?

10 A. No.

11 Q. What was -- do you know where the percentages were in
12 values?

13 A. Just take a look at Garlock. Garlock spent out of
14 \$1.4 billion, Garlock spent about a billion dollars of that on
15 nonmalignant claims.

16 Q. Let's talk about Owens Corning or Armstrong where you
17 testified. What was this breakdown between the amounts they
18 spent on nonmalignant claims and malignant claims at the time
19 they filed?

20 A. I don't recall.

21 Q. Was it more than 50 percent nonmalignant claims?

22 A. I simply -- you asked me about the number of claims or
23 the dollars?

24 Q. Not the number of claims, the values?

25 A. I don't recall.

1 Q. Don't recall whether it was more than 50 percent or more
2 than 60 percent?

3 A. I don't recall the percentages at all. It was quite a
4 while ago. I haven't read that in preparation for this. I
5 simply do not recall.

6 Q. How many years ago was it?

7 A. I'd have to look up and see.

8 Q. Ten years ago?

9 A. Let me see -- let me look at my CV and I'll tell you
10 wouldn't be -- it would be in the statement of qualifications.
11 In Owens Corning that was 2004.

12 Q. So that was nine years ago.

13 A. And in Armstrong it was 2006.

14 Q. So seven years ago. You don't recall what the
15 percentages were as respects the values of the claims that had
16 been paid by those two entities before they filed?

17 A. Not remotely.

18 Q. But you remember the numbers?

19 A. What numbers?

20 Q. The percentage that were -- percentage by number that
21 malignants and non-malignants?

22 A. I remember the numbers as a broad number. I'm not saying
23 that that was the exact number in either of those two
24 bankruptcies.

25 I remember that there was evidence that 90 percent of the

1 claims virtually -- that were nonmalignant. Virtually all of
2 which were generated by litigation screenings, and
3 approximately 10 percent were malignant claims. Of course the
4 malignant claims involved higher dollar values.

5 But the majority of the money in initial years was spent
6 on nonmalignant claims, and ultimately that shifted.

7 But what drove the bankruptcies, as I testified, were the
8 dollars spent on nonmalignant claims. Obviously if Garlock
9 had not spent 1.1 or \$1 billion on nonmalignant claims, it
10 would probably not be in bankruptcy today.

11 Q. If I were to suggest to you that in fact at the time
12 these entities filed the Chapter 11, their history was that
13 they had been spending more than 70 percent of their monies on
14 malignant claims?

15 A. Of course, because nonmalignant claims stopped being
16 brought. Judge Jack put the kibosh on screenings.

17 Q. When was that?

18 A. That was 2005.

19 Q. When were these bankruptcies filed?

20 A. Sometime in that time period I don't remember exactly
21 when they were filed.

22 Q. I would suggest --

23 A. Talking Owens Corning. That is 2000 and 2001.

24 Q. Right. That all happened before Judge Jack --

25 A. Owens Corning, let me see, was October of 2000, and AWI,

1 I think, was in 2001.

2 Q. But either way they were many years before whatever you
3 say resulted from what Judge Jack did?

4 A. Yeah. But screenings had already declined because as one
5 of the leading screeners testified before Judge Jack, the fear
6 of the Hatch Act had impelled some of the law firms and
7 screening companies to shift from screening for asbestosis to
8 screening for silicosis.

9 So even before Judge Jack, there had been a move away
10 from the traditional asbestosis screenings.

11 Q. Had that happened before the year 2000?

12 A. I think that in terms of screenings, probably the peek
13 was around 1998, 1999.

14 Q. You testified this morning that the height of the filings
15 of nonmalignant claims was in 2003?

16 A. Correct.

17 Q. So those screenings were done in 1998?

18 A. It takes several years, law firms don't immediately file
19 cases when they do screenings. They first of all accumulate
20 hundreds or even thousands of cases before they file them.
21 And the filings could be a year later, two years later, three
22 years later. Depends on the firm's inventory, depends on
23 where it files cases.

24 Q. Even -- sorry. Even five years later, from 1998 to 2003?

25 A. Seems a bit long to me, but I couldn't say with any

1 certainty as I sit here today.

2 Q. Those claims would be barred by the Statute of
3 Limitations, wouldn't they, in many jurisdictions?

4 A. Yes. That would be an issue. Because once they did the
5 screening and had a "diagnosis" of an asbestos-related
6 disease, then the Statute of Limitations would start to run.

7 Q. So it wasn't Judge Jack that made the difference, it was
8 the fear of the Fair Act and that was manifested back in 1998
9 somewhere?

10 A. I would guess somewhat later than that.

11 Q. That's what you said.

12 A. Let me -- let me answer the question.

13 Q. I'm sorry.

14 A. I don't remember when the M in N and M Screening Company
15 took the Fifth Amendment about screenings. But that was about
16 the time that there had been the shift in screening -- the
17 focus of screenings from asbestosis to silicosis.

18 Q. You think that was in 1998?

19 A. No. I think it was later than that.

20 Q. Later than that?

21 A. Yes.

22 Q. In any event, it wasn't all about what Judge Jack did in
23 the silica litigation?

24 A. It wasn't all about that, but she had a tremendous
25 influence.

1 Q. But the height -- as you testified this morning, the
2 height of the filings of non-malignants was reached in 2003.
3 Do you still think that?

4 A. Based upon my recollection of the Manville data, their
5 highest level of claim filings was in 2003.

6 Q. And Judge Jack --

7 A. Most of those claims were nonmalignant.

8 Q. And Judge Jack was a couple of years later?

9 A. Yes, that was 2005.

10 Q. So when these entities, Owens Corning and Armstrong filed
11 in Chapter 11 in 2000 or 2001, they were filing based on the
12 height of the nonmalignant surge, weren't they?

13 A. Well, the surge actually lasted beyond 2000/2001. They
14 certainly filed largely because of the screening generated
15 cases, that is the nonmalignant case.

16 Q. And 90 percent of the cases that were filed against those
17 entities, as you learned in those bankruptcies, were
18 nonmalignant cases?

19 A. I would just say that I -- I would say, yes, except that
20 I don't think I learned that in those bankruptcies. I learned
21 that.

22 Q. You knew that anyway?

23 A. I knew that anyway, yes.

24 Q. But you don't have any memory at all, as you sit here
25 today, of how much of the value of those cases up to that

1 point in time, up to the year 2000 and 2001, had been the fact
2 with these entities that went into Chapter 11?

3 A. No, I don't have any recollection.

4 Q. You think you knew it back in 2000?

5 A. I would think I probably did.

6 Q. And you probably think you knew it when you testified in
7 those bankruptcies?

8 A. I don't remember whether I testified as to those facts or
9 not.

10 Q. But do you think it was something you would have learned
11 in advance of your testimony?

12 A. It seems not unlikely, but that's simply a speculation.

13 Q. Do you think it's relevant?

14 A. Relevant to what?

15 Q. To any of the issues that came up in the Chapter 11
16 estimations of Owens Corning and Armstrong's liabilities?

17 A. Oh, I think the dollar demarcation was relevant,
18 especially with regard to the projection going forward of
19 claim values. As the malignancy claims took -- became more
20 dominant, their values became much more important in terms of
21 the estimation proceedings.

22 Q. What you are saying here, as I understand it, is that the
23 settlement history that the experts for the committee relies
24 on, shouldn't -- is not reliable, because it results from
25 experiences that were riddled with disinformation or refusal

1 to provide information as to exposure to products other than
2 Garlock's. Is that the thrust of what you're saying?

3 A. Yes.

4 Q. Now I want to kind of peel that down and ask you what
5 wasn't being disclosed? Are you saying here that when the
6 plaintiffs, when they testified, they were lying about their
7 work histories?

8 A. In the cases that I referred to, that's the evidence. I
9 think it's pretty clear that they were misstating the facts
10 about their exposures. They denied exposures to which they
11 were filing claims, and filed claims before the tort cases,
12 and after the tort cases. They filed affidavits attesting to
13 those exposures to the products of the bankrupts before or the
14 tort cases or during the tort cases. And claimed that they
15 had no such exposures when asked in the interrogatories and in
16 the depositions.

17 Q. I'm trying to separate out two separate issues, if I
18 might. One is denial by the plaintiff of exposure to a
19 particular kind of asbestos-containing product. And on the
20 other hand, denial by plaintiff of knowledge of who
21 manufactured that product. Do you understand that
22 distinction?

23 A. I'm not sure. I don't recall plaintiffs -- I don't
24 recall reading testimony of plaintiffs denying who
25 manufactured products. I don't remember them being asked who

1 manufactured products. They may well have been, I just don't
2 recall that.

3 Q. So your opinion here is not based upon whether or not a
4 plaintiff could or could not remember the identity of the
5 manufacturer of the products they were exposed to?

6 A. My opinion is based upon the suppression of evidence of
7 exposure to the products of bankrupts.

8 Q. By the products of bankrupts, you attach that -- the name
9 of the bankrupts attached to the product or is it just the
10 product itself?

11 A. Well, at least the product.

12 Q. Just the product.

13 A. Well, at least the product.

14 Q. Now, let's talk about the plaintiff who's testified
15 already. Because I think it's important to understand this
16 distinction. Who is the plaintiff that's testifying, by
17 nature? Is it an older person?

18 A. Probably.

19 Q. Because the median latency period for mesothelioma
20 incidence is about 35 years. Do you know that?

21 A. It's somewhere in that range, yes.

22 Q. So that half of the people who are testifying who have
23 mesothelioma, were exposed more than 35 years. Their first
24 exposure was more than 35 years ago, and half of them were
25 exposed less than 35 years ago. Is that what median means?

1 A. I don't know if that's what it means in that context.

2 Q. I think the court heard testimony about what that means
3 earlier.

4 So they're old and sick, and you described briefly on
5 direct examination the nature of the disease they have. It's
6 a terrible disease, is it not?

7 A. Absolutely.

8 Q. And when they're testifying, sometimes for days at a
9 time, they're suffering from the rigors of this disease; is
10 that correct?

11 A. Some of them are, yes.

12 Q. And they're being asked at these -- in the depositions
13 and through their other discovery, to identify what products
14 they worked with 35 years ago?

15 A. Yes.

16 Q. And you're saying that they were lying?

17 A. I'm saying that when they denied certain exposures having
18 already filed trust claims, claiming regular and frequent
19 contact with those products, that those denials were obviously
20 false.

21 Q. Well, again, when a claimant files a trust claim, he's
22 identifying the trust's predecessor as the manufacturer of the
23 product he claims exposure to, does he not?

24 A. Yes.

25 Q. Now if he doesn't know who that manufacturer is, if all

1 he knows is he was exposed to a particular product at a
2 particular site and he discloses that information, is he doing
3 anything wrong?

4 A. If he disclosed that, for example, he was exposed to
5 Unibestos or Kaylo, that would be responsive to the
6 interrogatories.

7 That would be -- if the question in deposition were, what
8 products were you exposed to, and that's what he testified and
9 that was correct. That would certainly be a valid response.

10 Q. Suppose he doesn't know whether it's Unibestos or Kaylo
11 or remember that. But he remember he was exposed to disrupted
12 pipe coverings, is he telling the truth?

13 A. You're getting into a gray area.

14 Q. What's gray?

15 A. Well, what's gray is he remembers he was exposed to
16 Garlock's gaskets.

17 Q. They had their name on their products?

18 A. No other products does he remember that he was exposed
19 to.

20 Q. He understood he was exposed to the Garlock gasket, it
21 had its name on it when he tore it out, didn't it?

22 A. Tore out the gasket had Garlock's name on it?

23 Q. Yes, it did?

24 A. From the pictures I saw, I don't think you could read
25 anything on those gaskets.

1 Q. Well --

2 A. When I say the pictures, I'm referring to the pictures
3 that we saw this morning, among others.

4 Q. Just give me a minute.

5 A. Or yesterday. I don't remember anymore.

6 Q. Do you know who Dr. Bates is?

7 A. Yes.

8 Q. And do you know -- have you read his report?

9 A. Yes.

10 Q. Did you read at page 25 of his report. Now I'm not
11 experienced with these machines, Your Honor, but I'm going to
12 do the best I can. I'm an old guy.

13 THE COURT: I'm with you.

14 BY MR. INSELBUCH:

15 Q. He says, "In fact Garlock's marketing department was so
16 successful in its branding efforts, that certain kinds of
17 industrial gaskets were often called "Garlock's", in the same
18 way that "Kleenex" or "Jello" are commonly used words in place
19 of facial tissues or gelatin desert."

20 It wasn't so hard then for plaintiff to know it was a
21 Garlock gasket, was it?

22 MR. CASSADA: I'll object. Lack of foundation. No
23 question between this and the question asked.

24 THE COURT: Answer if you can.

25 THE WITNESS: I simply don't know.

1 BY MR. INSELBUCH:

2 Q. You don't know. In any event, he may or may not have
3 remembered that it was a Garlock gasket. You don't know, do
4 you, as you sit here today, one plaintiff from another?

5 A. Well, I know that they remembered that they were exposed
6 to Garlock gaskets, because that's when they sued Garlock.

7 Q. Well, again, I want to separate out what the plaintiff
8 knows. Because what a defendant is entitled to in the tort
9 system, is it not, Professor Brickman, he's entitled to the
10 plaintiff's knowledge, and the plaintiff's evidence. He's not
11 entitled to the work-product of the plaintiff's lawyer; isn't
12 that right?

13 A. Well, I would say generally, yes.

14 Q. All right. So if the plaintiff doesn't remember the
15 names of any of his products, right, doesn't remember who made
16 the gaskets, who made the insulation product, doesn't remember
17 the names of anything. Does that mean he doesn't have a
18 lawsuit?

19 A. Could you repeat the question?

20 Q. All right.

21 The plaintiff, 35 years ago worked as a pipefitter and he
22 worked changing gaskets -- making and changing gaskets. In
23 the process of doing that he says, we had to tear out the
24 insulation and I was buried under a snowfall of this material.
25 And we tore out this gasket, and I scraped it out, scraped off

1 the residue, made a new gasket, put it back together and they
2 put more insulation on it. That's what he testified to. And
3 he doesn't have any idea personally whose stuff it was,
4 whether it was -- whose stuff was the insulation material
5 that's raining down on him in a snowfall, whose gasket it was
6 he tore out, scraped around, cleaned off, whose gasket it was
7 he recreated, cut up, put back in. Does he have a lawsuit?

8 A. Pre-2000, 2001, that plaintiff remembered all of the
9 products of the bankrupts to be that he was exposed to. Post
10 the bankruptcy wave, that plaintiff no longer remembered those
11 products. Remembered Garlock gaskets, but not the products of
12 the bankrupts. That testimony changed, according to testimony
13 in this case, according to expert reports, according to the --
14 Dr. Bates's rebuttal report in which he analyzed the 200 RFA
15 cases.

16 MR. INSELBUCH: Your Honor, I would like to move to
17 strike the witness's answer. I would like the question read
18 back. I would like the court to direct the witness to answer
19 the question.

20 THE COURT: All right. We'll strike the answer and
21 go back to -- can we find the question?

22 THE WITNESS: Would you repeat the question?

23 MR. INSELBUCH: Can we have it read back?

24 THE COURT REPORTER: The plaintiff, 35 years ago
25 worked as a pipefitter and he worked --

1 MR. INSELBUCH: I'm sorry, ma'am. He can't hear
2 you.

3 MR. CASSADA: Could you read the question, too?

4 THE COURT REPORTER: That is the question.

5 MR. INSELBUCH: This is the question.

6 MR. CASSADA: Okay.

7 THE COURT REPORTER: "The plaintiff, 35 years ago
8 worked as a pipefitter and he worked changing gaskets --
9 making and changing gaskets. In the process of doing that he
10 says, we had to tear out the insulation and I was buried under
11 a snowfall of this material. And we tore out this gaskets,
12 and I scraped it out, scraped off the residue, made a new
13 gasket, put it back together and they put more insulation on
14 it. That's what he testified to. And he doesn't have any
15 idea personally whose stuff it was, whether it was -- whose
16 stuff was the insulation material that's raining down on him
17 in a snowfall, whose gasket it was he tore out, scraped
18 around, cleaned off, whose gasket it was he recreated, cut up,
19 put back in. Does he have a lawsuit?"

20 THE WITNESS: Well if he can't identify a product, I
21 don't know who he can sue.

22 BY MR. INSELBUCH:

23 Q. Well, does he have to identify the product out of his own
24 memory?

25 A. Well, he has to identify the product.

1 Q. He's identified the product.

2 A. In order to sue any of the viable defendants, he has to
3 identify exposure to that, to a specific product of that
4 defendant, and claim that he was injured by that product, and
5 that the defendant is liable for that injury.

6 Q. Yes, he has that responsibility. But does he have to
7 meet that responsibility through his own memory?

8 A. Well, that's -- I hesitate to answer that in any
9 definitive way, because in practice that's not how it works.
10 You're asking me a theoretical question that simply doesn't
11 exist in reality --

12 Q. Well --

13 A. -- in that circumstance --

14 Q. Well --

15 A. All of these -- if he's a plaintiff, he's brought a
16 lawsuit. If he's brought a lawsuit, he's identified a
17 product. Otherwise he's not a plaintiff.

18 Q. I take it you've never been to one of this trials then,
19 Professor Brickman?

20 A. I've been at several asbestos trials, yes.

21 Q. And you never heard of the proof put in showing who --
22 whose products were involved, through records of ship building
23 from the Navy, to the testimony of other witnesses of people
24 who are familiar with the supply of these products. Do you
25 know about any of that Professor Brickman?

1 A. I recall testimony about what products were used in what
2 kinds of workplaces, as presenting -- or evidence of exposure
3 to those products by people who worked in those workplaces.

4 Q. Well, let me see if I can do it a little bit more
5 specific.

6 The plaintiff remembers that he worked on a certain Navy
7 ship during a certain period of years. And he testifies that
8 what he did was, he was -- he either tore out the insulation
9 or was there when other people tore out the insulation. And
10 he was there under a snowstorm of this insulation material.
11 And he got the gasket out. And he scraped out the gasket
12 material. He caulked -- created a new gasket, put it in, and
13 then they put the insulation back. And he did it on this ship
14 during this period of time, but he doesn't remember whose
15 stuff it was. In fact, he says, he didn't even know whose
16 stuff it was.

17 Now, isn't it his lawyer's burden now to find the proof
18 that ties that testimony to whose products were killing this
19 plaintiff?

20 A. Yes.

21 Q. Right. And how do they go about that?

22 A. Well, they could get testimony of other people who served
23 on board the ship at the same time, testimony from experts who
24 know what products were on board ships in the certain time
25 period, what kinds of ships and so on.

1 Q. And that's the job of the plaintiff's lawyer if he wants
2 to prove the case against, for example, the insulation
3 manufacturer?

4 A. Yes.

5 Q. And if he doesn't want to prove the case against the
6 insulation manufacturer, because the insulation manufacturer
7 is now in bankruptcy, and there's a stay against proving your
8 case against that entity. But the defendant wants to prove
9 whose product it was there, it now becomes the burden of that
10 defendant's lawyer to prove whose product was there, is that
11 true?

12 A. I would say in a theoretical sense, yes.

13 Q. Well, I'm talking about the tort system as it exists
14 around the country today, not in a theoretical sense.

15 A. As I understand -- my experience with the tort system
16 based upon my scholarship, is that prior to the bankruptcy of
17 various companies, plaintiff's testified that they were
18 exposed to those products. As soon as that company went into
19 bankruptcy like Manville, there's a sea change in plaintiff's
20 testimony and witness testimony, that the exposures were no
21 longer to the products of the bankrupts, but to the products
22 of viable companies.

23 That's the way I understand, and that's the results of my
24 research on what goes on in the tort system.

25 Q. Well, we're going to check your research a little bit

1 later. Did you hear Mr. Henshaw testify?

2 A. I don't think so -- no.

3 Q. He's an industrial hygienist that Garlock put on to
4 testify as an expert. And his testimony, as the court will
5 remember, is, he worked up this big project where he tried to
6 figure out what more or less average exposures were that were
7 inflicted on these workers depending on what they did and
8 where they did it.

9 A. I'm sorry. When was -- when did he testify?

10 Q. Yesterday.

11 A. Then I may have --

12 Q. Day before?

13 A. I may have been present. I just don't remember.

14 MR. CASSADA: Yesterday.

15 BY MR. INSELBUCH:

16 Q. Yesterday morning?

17 A. So I was present then.

18 Q. So you heard this?

19 A. I don't think so. I don't remember.

20 Q. This happened yesterday?

21 A. That sounds like a week ago.

22 MR. CASSADA: Mr. Brickman was in the courtroom in
23 the afternoon --

24 BY MR. INSELBUCH:

25 Q. I'm not testing you on what he said, I'm telling you what

1 he said. I want to see if it surprises you.

2 A. You asked me if I was present. I know I heard one
3 industrial hygienist, and I think that was the day before
4 yesterday.

5 Q. Now Mr. Henshaw testified that in order to understand and
6 be able to describe the jobs, and how they worked, and what
7 people did, what they did each part of the day in accordance
8 with their job descriptions, he read something like 300 or 500
9 depositions taken of these plaintiffs.

10 And he was asked, if in the course of those depositions
11 did they -- did they describe their exposure to insulation
12 products and recall the names of specific products like Kaylo
13 Unibestos, Thermabestos, et cetera. He was asked that. And
14 he said they frequently did.

15 Is that inconsistent with what you're talking about?

16 A. They frequently did identify the products?

17 Q. Yeah. That can't be, right? Because there's the a
18 suppression theory that's going on. So these 500
19 depositions -- you didn't read 500 deposition transcripts, did
20 you?

21 A. You mean in preparation for today's trial?

22 Q. The 500 deposition transcripts --

23 A. Over the course of my research --

24 Q. -- of mesothelioma claimants, ever?

25 A. Over the course of my research -- I would just estimate

1 the number of depositions I've read in the hundreds, but I
2 don't know what -- I wouldn't give it anymore exactitude.

3 Q. All right. You read, at most 16, didn't you?

4 A. I'm sorry.

5 Q. You read, at most 16 of these claimants' depositions?

6 A. I read.

7 Q. The ones you were given.

8 A. I read a lot more than 16 depositions in preparation for
9 the trial.

10 Q. Did you read the 16 depositions through page -- from page
11 one to the end of all of the 16 cases that you're talking
12 about?

13 A. I read parts of the depositions. I read some entirely.
14 I read some partially. And I read a lot more depositions than
15 those 16.

16 Q. And of the same 16 claims or 18 claims, did you read
17 through their discovery responses apart from depositions?

18 A. Well, I read quite a few interrogatory responses. I
19 read -- I don't remember how many depositions -- parts of
20 depositions dealing with the question of the products they
21 were exposed to. And also some trial transcripts.

22 Q. So we'll save the trial transcripts. Isn't it a fact
23 that you read parts of the depositions or materials that the
24 Garlock lawyers referred you to?

25 A. In some cases, yes.

1 Q. Going back to this sick and dying plaintiff. Let me show
2 you a picture of a ship's hold. We've seen a bunch of these
3 here today -- over the course of the week. I take it you've
4 never been in the hold of a ship?

5 A. Cruise ship.

6 Q. Have you ever been in the engine room of the cruise ship?

7 A. I think I did take a tour.

8 Q. And did it look like that?

9 A. I have no recollection.

10 Q. Now looking at that material, do you know what it is?

11 A. I don't know for certain.

12 Q. Do you know what pipe covering is?

13 A. Yes.

14 Q. Do you see any pipe covering there?

15 A. Yeah, I see lots of pipe covering.

16 Q. Do you know where the valves are?

17 A. I see several valves.

18 Q. Can you tell by looking at that material who manufactured
19 it?

20 A. No.

21 Q. And that's not because -- are you saying that someone who
22 is experienced with that would be able to do that?

23 A. I don't know.

24 Q. In fact, Mr. Liukonen testified a few days ago for
25 Garlock. And if my memory is correct, he was shown one of

1 these pictures, and he was asked if he could tell you whose
2 stuff that was. And he said no he couldn't.

3 So we now have the older sick plaintiff testifying about
4 events 35 years ago and being asked, what were you exposed to?
5 Are you surprised that he couldn't remember who made that
6 stuff when he tore it out?

7 A. If he can't remember, he can't remember.

8 Q. Would it have been important to him 35 years ago when he
9 was tearing it out who made it?

10 A. I doubt it.

11 Q. So the fact that he can't remember something that wasn't
12 important to him 35 years ago, probably not -- he's probably
13 telling the truth, isn't it he?

14 A. If that's what he's testifying to.

15 Q. So as we said before, his lawyer then has the burden, if
16 he was in this engine room and he was exposed when they tore
17 out this covering, to get to those gaskets, his lawyer would
18 have the burden of figuring out whose stuff that was to sue
19 him?

20 A. Well, in order to bring a lawsuit, you have to identify
21 the product that you were exposed to that you allege caused
22 your disease.

23 Q. Right. As you say, I think you agree with me, he gets
24 that proof from bill records of these ships, testimony of
25 others who were familiar with what actually was installed on

1 these ships or other facilities; is that right?

2 A. Among others, yes.

3 Q. Among others. Now, is that hard to do?

4 A. It can be.

5 Q. How hard could it be when the plaintiffs' lawyers, who
6 you comment on here, were able to do it often enough to drive
7 these companies into Chapter 11?

8 A. Well, as I testified, testimony identified products of
9 the bankrupts before they were bankrupted, with a lot of
10 frequency. That frequency diminished virtually at once, once
11 the companies entered bankruptcy.

12 So I take that into account in dealing with your
13 question. But the reality is, that testimony about product
14 exposure identified the products of viable companies. When
15 viable companies entered bankruptcy the testimony changed.

16 Q. How do you know that?

17 A. Well, I look at the Manville example. Before Manville
18 declared bankruptcy in 1982, most testimony indicated Manville
19 was the predominant product in the workplace. And I recall
20 that -- I think it was the Philadelphia shipyard there was
21 testimony that Manville product was about 80 percent of the
22 product in the workplace.

23 Then immediately after the Manville bankruptcy, the
24 amount of Manville product in the workplace that witnesses --
25 plaintiffs and witnesses testified to, diminished

1 substantially.

2 Indeed, I quote in my report about a particular witness
3 in the Brooklyn Navy yard case who was testifying about
4 product exposure and he said, you know, there was Manville
5 product all over the place. Oops, I wasn't supposed to say
6 that, was I?

7 Q. Somebody could testify to that anytime, couldn't they?
8 There's always a witness who could testify to that, whether
9 the plaintiff can or not?

10 A. A witness who can testify that he was not supposed to say
11 that?

12 Q. No, a witness that would testify that there was Manville
13 product all over the place and they do it now product?

14 A. Based upon what I've read, the amount of Manville product
15 they testified to is far, far less than before the Manville
16 bankruptcy.

17 Q. And that's reading of testimony, or reading of articles,
18 or reading of press reports, or reading memos written by
19 defendant's lawyers?

20 A. I think it could be all of that.

21 Q. I want to turn -- just so we're clear. You are saying
22 that the plaintiff's after 2000, lied about knowledge of
23 exposure to products irrespective of whether or not they were
24 asked whose product it was?

25 A. Well, I'll put it in my own words.

1 Q. Okay.

2 A. It is that plaintiffs denied exposures to products where
3 they had filed trust claims, claiming regular and frequent
4 exposure to those products prior to the lawsuit, subsequent to
5 the lawsuit, that is the tort case.

6 They denied exposure to products where their counsel had
7 filed 2019 statements which included an allegation of exposure
8 to those products. They denied exposure to products when
9 their counsel had filed 524(g) ballots stating -- attesting
10 under penalty of perjury that they were exposed -- that their
11 clients were exposed to those products.

12 Q. Let me try it again.

13 Are you saying that the plaintiffs lied and denied being
14 exposed to insulation products?

15 MR. CASSADA: I'll object to the question unless you
16 specify which plaintiffs.

17 MR. INSELBUCH: Any plaintiff he knows about.

18 MR. CASSADA: Talking about among the 15 --

19 MR. INSELBUCH: Any plaintiff he knows about.

20 MR. CASSADA: Whether any plaintiff lied?

21 THE COURT: All right. Go ahead.

22 THE WITNESS: My testimony is limited to denials of
23 product exposures. That's the evidence I examined, which is
24 not -- which is the 15 cases and other evidence that I've
25 already identified. I don't know whether plaintiffs' lied or

1 not in any specific case, except those that I've looked at.

2 I look at the pattern and practice of the law firms
3 that have this policy of delaying trust claims, and also
4 failing to identify products that -- where they claimed
5 exposure, but interrogatories and depositions the plaintiffs
6 denied exposures.

7 So you're asking me a different question, and I
8 don't think I can answer that question as to whether or not
9 they lied about, what was it products, or exposures, I'm not
10 sure which.

11 Q. I'm asking you, do you contend as you sit here today,
12 that starting in 2000, plaintiffs wrongfully and falsely
13 denied being exposed to insulation products?

14 A. I'm saying that after 2000, 2001, the number of failures
15 to identify the products of the bankrupts essentially tripled,
16 the percentage of products not identified in litigation --
17 percentage of products -- of undisclosed product -- exposures
18 were tripled. That's as far as I can go.

19 Q. So you're not saying that they withheld or wrongfully
20 denied information about being exposed for example to
21 insulation products?

22 A. I'm not -- I think that's correct. I'm not saying that
23 they wrongfully denied exposure to insulation products or any
24 other type of products. I'm saying that in the cases I
25 examined, they wrongfully denied exposure to specific

1 products.

2 Q. By specific, you mean the names of the manufacturers of
3 those products?

4 A. No, the names of the products, like Kaylo.

5 Q. The names of the products which would then identify the
6 manufacturer?

7 A. -- or unibestos. What?

8 Q. Right?

9 A. I didn't hear you.

10 Q. I beg your pardon. I think I spoke over you.

11 They wrongfully denied identifying the product by its
12 trade name, which would then lead to information about who
13 manufactured it?

14 A. It might. I assume it would. But I'm specifically
15 limiting my testimony to identification of the products.

16 Q. And I think we said before, or you agreed with me before,
17 that it wouldn't surprise you at all that the plaintiff who
18 worked in this room 35 years ago, was rained down on by this
19 asbestos, wouldn't know whether it was Kaylo or Unibestos?

20 A. I wouldn't be surprised, that's right.

21 Q. Now you told us earlier that you're familiar now, at
22 least, with Garlock's defenses. Basically the chrysotile
23 defense and the low-dose defense. You're familiar with that?

24 A. Well, the answer is, I don't consider myself an expert on
25 that subject. But yes, I'm generally familiar with their

1 claim of those two defenses.

2 Q. The chrysotile defense says, our gaskets contain only
3 chrysotile. Chrysotile doesn't cause mesothelioma, so we
4 should get out of this case. That's what it is.

5 A. Is that a question or --

6 Q. Do you agree with that?

7 A. Generally, broadly.

8 Q. Yeah. So that doesn't matter for that defense what other
9 products were in the room. They're either right or they're
10 wrong?

11 A. Well, I think as it does -- it does matter in reality
12 very much so.

13 Q. It matters for the low-dose defense, doesn't it?

14 A. Well, it matters with regard to both defenses, in terms
15 of the impact on a jury.

16 Q. We pride ourselves in the notion that juries can get it
17 right, don't we?

18 A. Who's we?

19 Q. All of us in this room?

20 A. Well, I think juries can do lots of things.

21 Q. But as a matter of legal principle, for the chrysotile
22 defense, it doesn't matter what other exposures the plaintiff
23 may have had for liability to be inflicted on Garlock? Either
24 the chrysotile defense succeeds or it doesn't. Either the
25 jury believes it or they don't?

1 A. But the chrysotile defense is also presented in the same
2 proceeding as the low-dose defense, and so I think the two can
3 play off each other before the jury and.

4 Q. Okay.

5 A. If the jury doesn't buy the chrysotile defense
6 100 percent, but buys it 90 percent, that may well have an
7 impact on how the jury deals with the low-dose defense.

8 Q. Could well be.

9 Now the low-dose defense, that defense as we've seen it
10 presented in this court with some large balls of exposure to
11 the amphibole products, and the little tiny balls of exposure
12 to chrysotile says, okay, he was exposed, but so little of our
13 stuff, and so much of their stuff, that our stuff couldn't be
14 a proximate cause or whatever the formulations under the law
15 in the various jurisdictions of his illness. Is that
16 basically what it is?

17 A. Yes, I would agree with that.

18 Q. Now does that -- does any part of that defense depend on
19 whose stuff that is?

20 A. Whose stuff.

21 Q. Who made -- who made the amphibole material that rained
22 down on his head?

23 A. Well, in reality, yes. If the plaintiff has identified
24 the products of the bankrupts, the value of the case will be
25 significantly less than if he identifies Garlock as the sole

1 or pretty close to the sole product he was exposed to.

2 Q. Now the plaintiff has testified he chopped up -- can we
3 show him a picture of chopping gaskets so we can see what he's
4 talking about. You ever seen this film?

5 A. No, I have not.

6 Q. You see what's going on there? There's the worker, he's
7 trying to get at that gasket, right?

8 A. Yep.

9 Q. And he's chopping away at all that pipe covering. As the
10 plaintiff will tell you, I don't know whose pipe covering it
11 is, but I was covered in this stuff, right?

12 A. Yes.

13 Q. Now, if that's the testimony, and Garlock puts on the
14 brilliant experts we heard here yesterday, today, or the day
15 before, he says, look, he's got exposure to so much of that
16 stuff, that the little bitty exposure -- you can turn it
17 off -- the little bitty exposure that comes from playing with
18 the Garlock gasket, can't be a proximate cause. Does it
19 matter? Does it matter whose stuff it is?

20 A. It can very much matter.

21 Q. Why?

22 A. Well, for example, in California, in order to get on the
23 jury ballot with regard to allocation of percentage of
24 liability, you must identify a product. So if he says I was
25 exposed to insulation, it rained down on me. I was covered

1 with it. I slept with it. I ate with it. And he doesn't
2 name a product, it doesn't go on the jury sheet.

3 Q. That's for relative fault subjects, is it not?

4 A. I'm sorry.

5 Q. That's when you're dealing with relative fault. When
6 you've decided everybody's at fault. Now we're going to
7 apportion liability. Low dose is saying, we can't be liable
8 here?

9 A. Because others are liable.

10 Q. Whoever is liable, we can't be liable here.

11 A. Well, whoever is important.

12 Q. Why?

13 A. Because if they're bankrupts, that means that any
14 allocation by the jury to the products of bankrupts is going
15 to diminish the value of the case.

16 Q. If the plaintiff sues Garlock and can't prove that he was
17 exposed to Garlock gaskets, does it matter who else he proves
18 his case against, or not against, he gets a defense verdict,
19 doesn't he?

20 A. If he can't prove Garlock exposure?

21 Q. Right.

22 A. Presumably.

23 Q. So if the low-dose defense is -- has any (inaudible) and
24 all you got to show him is these proportions that these
25 experts came here and talked about. Great big ball of

1 exposure to the amphiboles. Little tiny pea exposure to the
2 chrysotile. If that's true, and if what their witnesses say
3 it's true, what difference does it make whose stuff it is?
4 They should get a defense verdict same as if they didn't get a
5 exposure tied to Garlock's gasket?

6 A. I think it makes a big difference in the reality of how
7 trials are conducted.

8 Q. Have you ever tried a case?

9 A. I think I previously said I did not.

10 Q. Have you ever settled a cases?

11 A. No.

12 Q. Do you have any personal knowledge of how trials work and
13 how juries decide things?

14 A. I have some knowledge. I read --

15 Q. Do you have personal knowledge --

16 (Simultaneous discussion by counsel and witness,
17 unreportable.)

18 Q. Excuse me.

19 A. I read a Hans Zeisel jury study project quite
20 extensively. I attended a program designed to educate law
21 professors in social science in which we looked at the jury
22 study project quite extensively with experts from various
23 disciplines to instruct us on the social science elements.

24 I have never tried a case. I have never represented a
25 plaintiff. I have never represented a defendant. I do not

1 practice law. I have not practiced law except on one occasion
2 a long time ago when I did some -- an appellate matter.

3 So I hope that forestalls a whole bunch of questions
4 about what I'm not.

5 Q. I just go back to my question. So you really don't know
6 what goes on in a courtroom?

7 A. I wouldn't say that no. I don't agree with that.

8 Q. You don't know -- you say that some things are important
9 to a jury and some things are not important to a jury; how do
10 you know?

11 A. Based upon my research over the years. My talking with
12 hundreds and hundreds of lawyers over the years. Mainly
13 defense lawyers to be sure, but also some plaintiff lawyers.

14 MR. INSELBUCH: Okay. Your Honor, if this is a good
15 time for the lunch break, I'm going to change subjects.

16 THE COURT: I kind of like to get done if we could.
17 Let's keep plowing until 1:00 or so --

18 MR. INSELBUCH: 1:00.

19 THE COURT: See if we can't get done with Professor
20 Brickman. We've got some other juggling to do today anyhow.

21 MR. INSELBUCH: Yes, Your Honor.

22 Q. Okay. Now let's turn our attention to the so-called
23 designated claimants that you looked at.

24 Do you know how many cases of mesothelioma have been
25 resolved by Garlock?

1 A. I believe --

2 Q. 2000 --

3 A. I'm sorry. I didn't hear the last word.

4 Q. I'll start again. Do you know how many cases against
5 Garlock for mesothelioma have been resolved by Garlock from
6 2000 to its filing of bankruptcy?

7 A. I believe the number is somewhere in the range of 11,000.

8 Q. Well, you're a little high. As I understand it --

9 A. Let me supplement. My understanding is it's 11,000 from
10 1999 to the time of filing.

11 Q. Well, if I were to suggest to you that the data that we
12 have suggests they were from 2000 to the filing it was 8,567.
13 That make sense to you?

14 A. It doesn't make sense or not make sense.

15 Q. Could be a bigger number?

16 A. What?

17 Q. Could be a bigger number?

18 A. The information I have is that Garlock settled 11,000
19 mesothelioma claims in that time in the -- I believe it was
20 from 1999 to the time of filing.

21 Q. We're focusing in, though, on this whole litigation in
22 the period 2004, are we not?

23 A. It's difficult for me to answer that in the abstract.

24 Q. All right. I will withdraw that.

25 Now of the 8,000 or 10,000 or 11,000 claims that they

1 settled, how many files did Garlock's lawyers present you
2 with?

3 A. How many files, you mean case files?

4 Q. Cases. Case files?

5 A. I did not receive any case files.

6 Q. How many claimants' materials did they ask you to review?

7 A. Well, they asked me to review the 15 designated plaintiff
8 cases.

9 Q. And there were three more, weren't there?

10 A. There were two more that I'm aware of. There were 17,
11 actually and --

12 Q. Could have been 18?

13 A. What?

14 Q. Could it have been 18?

15 A. My recollection is 17. If it's 18, then my
16 recollection's incorrect.

17 Q. Now, do you know anything about, how if at all, these 15,
18 17, 18 cases are or are not representative of the 8,000 or
19 10,000 claims that were resolved?

20 A. I don't claim that the 15 representative plaintiff cases
21 are necessarily representative of the 11,000 mesothelioma
22 claims that were settled in the time period that I listed.

23 I was more concerned about whether these cases were
24 representative of the big dollar cases. And I believe I may
25 have testified earlier, frankly I no longer remember, that of

1 the 11,000, there were about 244 settlements that were
2 \$250,000 or more. And that these 15 cases were big dollar
3 cases.

4 One of the characteristics of big dollar cases is that
5 there's a lot more data, there's a lot more in the case file.
6 There's more, you know, you wouldn't have depositions and so
7 on of claims that were settled for \$5,000, which was the
8 Garlock average mesothelioma settlement prior to the
9 bankruptcy wave.

10 So these cases presented a lot more information than the
11 general run of the 11,000 mesothelioma claims that were
12 settled, many for that sum of about \$5,000.

13 So I think it is my view, and I am somewhat fortified in
14 my view by Dr. Bates with regard to the representativeness of
15 these big these 15 big dollar cases of the 244 big dollar
16 cases.

17 Q. Okay. Let's talk about some of these.

18 On your direct examination Mr. Cassada asked you about
19 the Golini case. I think you said he denied other exposures;
20 is that correct?

21 A. Just a moment. He identified he was asked what he was
22 exposed to. And I believe my testimony was, he identified
23 none of the bankrupt companies.

24 Q. I believe we talked about what he would be able to
25 remember 35 years later. I'm asking you, did he not testify

1 to exposure to insulation products?

2 A. I believe he did testify to exposure to insulation
3 products, but did not name the companies or the products,
4 rather, that he was exposed to. And later he filed trust
5 claims with Owens Corning based upon exposure to Kaylo claims
6 against Fibreboard, Armstrong, and Eagle-Picher Trust.

7 And long before his deposition he had already signed 14
8 sworn statements attest under -- subject to penalties of
9 perjury that during employment he frequently and regularly
10 worked in close proximity to workers manipulating various
11 asbestos products.

12 Q. Are you reading something?

13 A. I am reading from an exhibit, yes.

14 Q. You're reading from something that Mr. Cassada wrote?

15 A. Yes. I am reading something that I have testified
16 earlier, that I fact checked.

17 Q. Well, let's just look at Mr. Golini's deposition taken in
18 2009 and we're going to start at page 31. Did you read this?

19 A. Can you provide me with a copy of his deposition?

20 Q. I'll put it up there.

21 A. I mean his entire deposition.

22 Q. Well, I believe your counsel -- this is part of the
23 material that Mr. Cassada supplied you with that you checked?

24 A. Yes.

25 MR. CASSADA: Got to see the context.

1 THE WITNESS: I would like to see more of the
2 deposition if I'm going to respond to any questions about one
3 line or another.

4 MR. INSELBUCH: Well, I don't have it here with me
5 Your Honor. It's material he used, and this is cross
6 examination?

7 THE COURT: Go ahead and ask him.

8 Q. Now let's look at line -- page -- page 31, line 23. And
9 the question is:

10 Q. Okay. Would you have to cut around the
11 insulation to get at the pipe?

12 A. Sometimes.

13 Q. Okay. What kind of tool would you use for
14 that?

15 A. You use the knife.

16 Q. Okay. The process of cutting or removing pipe
17 covering, would that create any dust?

18 A. Yes.

19 Q. Okay. Would you be breathing that?

20 A. Sure.

21 Q. So Mr. Golini did not withhold information to exposure to
22 insulation products, did he?

23 A. He didn't withhold information about insulation products.
24 He withheld information about the 14 sworn affidavits that he
25 signed before the litigation in which he attested to exposure

1 to Kaylo and a variety of other products.

2 Q. You're saying as you sit here today, that he must have
3 been making that all up because 35 years ago he knew who those
4 products were, and 35 years ago he remembers that, right?

5 That's what you're saying?

6 A. I'm saying that he signed --

7 Q. That when he testified he was not telling the truth?

8 A. I'm saying he signed 14 statements of exposure, 14
9 affidavits, sworn affidavits of exposure to the products of
10 bankrupts, and then never disclosed that in his testimony. If
11 you gave me the entire deposition, I would be able to assert
12 that with more authority.

13 Q. Let's talk about Mr. Homa. Do you know what his job was?

14 A. Off hand I don't recall.

15 Q. Do you contend Mr. Homa misrepresented whether or not he
16 was exposed to insulation products?

17 A. Mr. Homa -- the case was tried in New York where the
18 plaintiff is required to indicate all exposures, all trust
19 claims filed and expected or intended to be filed.

20 In fact, Mr. Homa did not reveal trust claims that had
21 been filed, or trust claims that they intended to file, and in
22 fact did file.

23 As I indicate, he eventually filed 22 trust claims, three
24 ballots, five 2019 statements that were never disclosed to
25 Garlock. So there were a total of 29 unidentified exposures.

1 That is, 20 trust claims, three ballots, and three 2019
2 statements.

3 Many of the trust claims relied on exposures to specific
4 insulation products never disclosed in discovery. For
5 example, a GAF product and a Kaiser product. I could go on,
6 but I think that's responsive to your question.

7 MR. INSELBUCH: I move to strike the answer as not
8 responsive. And I ask the court read back -- have the
9 question read back and the answer.

10 THE COURT: Well let's -- I think that was
11 responsive to the question.

12 Do you contend Mr. Homa misrepresented whether or
13 not he was exposed to insulation products?

14 MR. INSELBUCH: I'll press that question. I don't
15 think it's been answered.

16 THE WITNESS: I think he said he was exposed to
17 pipe -- you know, pipe covering products that he cut off.

18 BY MR. INSELBUCH:

19 Q. Let's look and see. Page 35 of his deposition taken --

20 A. I would like to see the pages between 31 and 35. You're
21 selecting lines, and I have no way of looking at context. I
22 would like to be able to at least see within five pages either
23 way --

24 Q. You'll have a chance on redirect.

25 A. -- of the lines you're referring to.

1 Q. You'll have a chance on redirect.

2 THE COURT: Let's go with what we got.

3 BY MR. INSELBUCH:

4 Q. Page 35, line 17.

5 Q. Sir, as a fireman recruit, do you believe that
6 you were exposed to asbestos in any way while serving on
7 board the Sitkin.

8 That's a Navy ship in the US Navy ship.

9 A. Yes, I do.

10 Q. Again, just as a fireman recruit?

11 A. Yeah.

12 Q. How?

13 A. Well, anytime any work was done on the pumps,
14 valves or anything, the padding had to come down. A lot
15 of times that was cut or broke. You had the dammed
16 powder, and whatever came out of that stuff. And I had
17 to clean it up, sweep it up or whatever.

18 Q. That was in the engine room boiler room.

19 A. Yes, it was.

20 Q. The padding had to come down from the pumps and
21 valves, is that something that you would do or someone
22 else would take it down?

23 A. Well, once in a while I would probably take it
24 down, but most of the other guys would.

25 Q. You would have to clean it up?

1 A. Cleaned it up.

2 Q. Would you have to physically pick up this
3 padding?

4 A. Yes.

5 Q. Do you believe that the padding contained
6 asbestos?

7 A. As far as I knew, it did.

8 Q. What did the padding look like?

9 A. It was rough, white material, with some kind of
10 powder, or something inside the padding.

11 MR. INSELBUCH: Now we're going to turn to page 59,
12 line three.

13 Q. Again, there was piping running throughout the
14 engine room and boiler room, correct?
15 That's kind of like the picture we saw before.

16 A. Yes.

17 Q. The piping was insulated?

18 A. Yes.

19 Q. Do you know if that insulation that covered the
20 pipes created dust on board this ship?

21 A. If it got deteriorated, it did.

22 Q. Do you know if it got deteriorated?

23 A. That's hard to answer. I would say so at
24 times, yes, as old as that ship was.

25 MR. INSELBUCH: Now we're going to turn to page 84,

1 line five.

2 Q. How do you believe that you were exposed to
3 asbestos on board the Fred T Berry.
4 That's another Navy ship.

5 A. There was stuff they were getting rid of.
6 There may have been some asbestos material, you know,
7 they stored somewhere that was going off.

8 Q. What type of asbestos material?

9 A. You know, padding and so forth.

10 Q. Do you recall who manufactured any of that
11 padding?

12 A. No.

13 Q. The padding material that they were getting rid
14 of on board the Fred T. Berry, how do you believe that
15 you were exposed to that material?

16 A. They were dragging that stuff all over the
17 place, all over the decks and it was breaking apart.

18 Q. Was it a powder type of material?

19 A. Yeah.

20 Q. Were you doing that work or someone else?

21 A. Someone else, but I was in the area.

22 Q. Was it being done by the yard workers or by --

23 A. No, ships crew.

24 Q. Question ship's crew.

25 A. They were just trying to get rid of all that

1 lose stuff on board the ship. They were just carting it
2 off the ship whatever way they could.

3 Q. Okay. That powder cement, that was in bags?

4 A. Yeah, but the bags would break it would be on
5 the decks.

6 Q. It would create a lot of dust?

7 A. Create a lot of dust.

8 BY MR. INSELBUCH:

9 Q. So Mr. Homa testified that he was exposed to insulation
10 products, right? Yes or no, sir?

11 A. Yes. He didn't identify the products that he was exposed
12 to.

13 Q. We talked at length about whether he would be able to.
14 You couldn't, Mr. Henshaw couldn't, I couldn't.

15 A. But apparently he could when he filed 22 trust claims.

16 Q. Because he had a lawyer who did some research to figure
17 out what trust claims what -- who made that stuff. That was
18 his lawyer's job, was it not?

19 A. The David firm testified that they knew the trust claims
20 they were going to file immediately when they acquired that
21 client.

22 Q. And how did they know that, sir?

23 A. Well, I guess they have experience.

24 Q. That's right. And is the defendant's lawyer entitled to
25 the plaintiff's lawyer's experience in the tort system?

1 A. Let me repeat what I said.

2 The David firm, which was the referral firm, knew which
3 products they were going to assert exposure to, when they
4 acquired the case, before it went to -- I think was it Belluck
5 and Fox.

6 And in the New York standing order requires
7 identification of all trust claims that you have filed or
8 intend to file. The David firm intended to file those trust
9 claims from day one. They were not disclosed as the New York
10 rule required.

11 Q. We heard that before. But are you telling me that
12 Mr. Homa knew whose products were involved and didn't testify
13 truthfully?

14 A. I'm saying that he filed 22 trust claims in which he
15 asserted exposure to specific products, specific insulation
16 products among others. And none of these were identified in
17 the course of discovery in the litigation.

18 Q. I'm suggesting -- I'm asking you simply, whether you are
19 asserting that Mr. Homa was being less than truthful under
20 oath?

21 A. I don't know whether he was being less than truthful or
22 not. I don't know whether those 22 trust claims were valid
23 claims or not. I simply don't have that information.

24 Q. Have you --

25 A. I do know that they were filed --

1 Q. And --

2 A. -- that they were filed on the basis of assertions of
3 exposure to specific products.

4 Q. And if that information about whose products were
5 involved, came from information obtained by the lawyers
6 through their due diligence and their work-product, were they
7 obligated to give that information to the defendant's lawyers?
8 Isn't --

9 A. Perhaps I didn't make myself clear.

10 Q. Maybe I didn't give you the question --

11 A. -- David firm knew --

12 Q. Your Honor --

13 A. -- getgo which trust claims they were going to file.
14 I'm sorry, Your Honor.

15 THE COURT: Go ahead. Ask the question.

16 MR. INSELBUCH: I think we maybe we're belaboring
17 this.

18 Let's skip ahead. Let's just go to Reginald Taylor.

19 Q. Do remember Reginald Taylor?

20 A. Frankly, at this point, I can barely remember my name.
21 But --

22 Q. But you expect these plaintiffs from 35 years ago to
23 remember whose products they were exposed to when it didn't
24 even matter to them?

25 A. I expect them to have disclosed the exposures that they

1 claimed in trust claims filed before the litigation, before
2 the tort litigation, and often immediately after the
3 resolution of the tort litigation. If they remembered for
4 purposes of filing the trust claims, then they would have
5 remembered for purposes of the litigation of the tort
6 litigation.

7 Q. And if they didn't need to remember for purposes of
8 filing the trust claims, then what?

9 A. Didn't need to remember exposures when they filed trust
10 claims?

11 Q. Correct.

12 A. Well, they did need to know. You can't file a trust
13 claim unless you know the exposure, unless you have a
14 reasonable basis for claiming exposure to that product.

15 Q. You have to prove it somehow, do you not, but you don't
16 have to remember it?

17 A. Yes. You have to prove it somehow. That's correct.

18 Q. So it's not fair to say if they could remember it for the
19 filing of the trust claim, they could remember it when they
20 testified?

21 A. They're asserting exposure to that product of the
22 bankrupt.

23 Q. Let's look at Mr. Taylor for a minute. Do you remember
24 him?

25 A. Well, he's one of the 15.

1 Q. So you're going to go reread what Mr. Cassada wrote about
2 it?

3 A. I'm going to refresh my recollection, yes.

4 Q. Why don't you do that?

5 A. Okay.

6 Q. You let me know when you're done?

7 A. Okay. I'm done.

8 Q. Let's turn to page 94. Talking to Mr. Taylor about
9 tearing stuff off a turbine. The question is:

10 Q. And what were they tearing off the turbine
11 exactly?

12 DEFENSE LAWYER NUMBER ONE: Objection;
13 lacks foundation.

14 THE WITNESS: Well, just white stuff, you
15 know, everything is painted white or gray in the Navy.
16 So it's pretty thick, 3, 4 inches, and they would pull it
17 off and then we would pick it up and throw it in the
18 garbage cans and take it out.

19 Q. And do you know whether or not this was
20 insulation?

21 A. It was insulation.

22 Q. Okay. And you would be taking this
23 insulation -- what -- would they throw it on the ground
24 and you would pick it up and put it in the trash cans?

25 DEFENSE LAWYER NO. ONE: Leading.

1 THE WITNESS: Yes.

2 Q. What would you do with the insulation after you
3 picked it up?

4 A. Me and another fireman apprentice would pick it
5 up and they had dumpsters in the hangar bay and we would
6 put it in the dumpsters.

7 Q. Okay. And when they were tearing off this
8 insulation, what were the conditions in the air like?

9 DEFENSE LAWYER NO. 1: Leading.
10 Overbroad.

11 THE WITNESS: Really dusty. The turbines
12 might be worked on once every day for five years --

13 THE WITNESS: Can you scroll?

14 THE WITNESS: -- accumulated a lot of dust.

15 DEFENSE LAWYER NO. 1: Move to strike as
16 speculative, nonresponsive portion.

17 Q. Did you ever breathe in this dust?

18 A. Yes.

19 Q. Now, as you were dumping out these trash cans
20 were you required to do any other cleaning around the
21 turbines?

22 A. Sweeping it up.

23 Q. Okay, and did you do that?

24 A. Yes. Swept it up. Put it in dust pans. Put
25 it in the garbage cans.

1 Q. And what were the conditions in the air like
2 when you did that?

3 A. Really dusty dirty.

4 Q. Okay. Okay, now I don't know if you said this
5 or not, but what does a turbine do on a ship, especially
6 the USS Hornet?

7 MR. INSELBUCH: Perhaps we can shorten this. Take
8 that down.

9 Q. Did you read that material when you prepared your report?

10 A. As I sit here today, I have no recollection of whether I
11 did or did not.

12 Q. That was in April of this year sometime?

13 A. It was before April.

14 Q. February of this year?

15 A. The memo from -- is dated April 12th. There were
16 preliminary memos that had some of this information. So some
17 of it --

18 Q. You don't remember --

19 A. -- I read earlier, but I certainly --

20 Q. But in any event --

21 A. -- spent a great deal in April reading this.

22 Q. You don't remember when you read this within the last
23 year or so?

24 A. I don't -- if I read it, I read it sometime in either
25 February, March or April --

1 Q. Well I --

2 A. -- and no other time.

3 Q. Volume two of Mr. Taylor's deposition. Page 176, line
4 eight.

5 Q. And when you saw it cut, what tools would be
6 used to cut the pipe covering?

7 A. It would be like a knife, like a -- I'll just
8 say a knife.

9 Q. Okay. And the pipe covering would be cut like
10 a sawing or a cutting action?

11 A. Yes.

12 Q. And when that was done, would that generate
13 dust?

14 MR. JONES: Vague and ambiguous.

15 DEFENSE LAWYER NO. 1: Calls for
16 speculation.

17 DEFENSE LAWYER NO. 2: And calls for
18 speculation.

19 Q. Go ahead.

20 A. Yes.

21 BY MR. INSELBUCH:

22 Q. You talked in your testimony about Mr. Treggett, did you
23 not?

24 A. Yes.

25 MR. INSELBUCH: Sorry, Your Honor. I'm getting old

1 too.

2 Q. Treggett. Sorry. Do you know what he did? What his job
3 is?

4 A. I know what he testified to, generally.

5 Q. What did he testify his job was?

6 A. He said that he worked on board a nuclear submarine
7 removing gaskets. That was part of his testimony. There were
8 other parts dealing with -- I'll stop at that point. That's
9 what I recall.

10 Q. Do you know whether he testified to exposure to
11 insulation products?

12 A. I believe he did.

13 Q. Let's make sure. Page 34.

14 A. When you say -- let me just amend my answer.

15 He testified of exposure to pipe insulation, but not pipe
16 insulation products.

17 Q. What's the difference?

18 A. The products of the names of products.

19 Q. He Testified to exposure to the pipe insulation, but
20 didn't identify what products they were, is that what you're
21 saying?

22 A. Yes.

23 Q. All right. Well let's see what he said. Page 34.

24 Q. When you were doing your repairs on the pumps
25 aboard the ship, was it necessary for you as the

1 machinist mate, to remove or disturb any insulation or
2 insulation material from the exterior of the pumps before
3 the work could be done?

4 A. All the time, yeah. I mean, that was the first
5 thing we usually did, yeah.

6 THE DEFENDANTS IN UNISON: Lacks
7 foundation, vague.

8 Q. Who was charged with removing that lagging or
9 insulation, in order to do the work that the machinists
10 made had to do?

11 DEFENSE: Same objection.

12 THE WITNESS: Whoever the person was who
13 was given the task of repairing the pump.

14 Q. Did that include you?

15 A. That included me, yes.

16 Q. Do you recall what the conditions in the air
17 were like, when the insulation or lagging was removed
18 from the pumps board the Marshal?

19 MR. INSELBUCH: Marshal is another Navy ship.

20 A. It was very dusty and dirty.

21 Q. Did you inhale that dust?

22 A. Couldn't help it, yes.

23 Q. How frequently do you remember doing that type
24 of work with pumps aboard the ship?

25 A. We did it a lot, almost a daily occurrence,

1 especially during upkeep.

2 MR. INSELBUCH: Okay. Page 36.

3 Q. How would you --

4 MR. INSELBUCH: Strike that.

5 Q. When you were working on pumps that had been
6 insulated with blankets, how would you remove or disturb
7 the blankets from the pumps?

8 A. We would have to cut away the wire that was
9 used to tie the blanket on it. It was -- it had loops
10 that were fixed in it, and you would lace it with wire to
11 make sure that you could put it on tight. So we would
12 have to cut the wire, and then physically unwrap the
13 blanket from the flange piece of equipment and fish it
14 out, sometimes just tug it out from the cramped space
15 that was it was in, in order to expose the flange, so we
16 could unbolt it.

17 Q. Can you describe for the jury the conditions in
18 the air as you moved these blankets from the exterior of
19 the pumps?

20 A. Oh, anytime we used the blankets or messed with
21 the blankets, it just created a huge amount of dust
22 cloud.

23 THE DEFENDANTS: Belated, lacks
24 foundation, misstates testimony.

25 Mr. Zecher joined.

1 Q. Did you inhale that dust?

2 A. Couldn't help but inhale it, yes.

3 Q. That was volume one of Mr. Treggett. Now let's look at
4 volume three of Mr. Treggett. As I mentioned to you, these
5 dying folks sat for depositions for several days at a time.

6 Let's turn to page 533.

7 Q. Just so we have a clear record, every time you
8 worked on the air compresses, you saw lagging being
9 performed on the engines.

10 MR. INSELBUCH: Excuse me, Your Honor.

11 A. Yes, I had to walk through and pass them, walk
12 through their dirt and dust and filth to get into the air
13 compressor alley, yes.

14 MR. INSELBUCH: Now let's turn to page -- oh, let's
15 take a look at the plaintiff's answers to interrogatories.

16 Q. You looked at their interrogatories too, if they were
17 supplied to you?

18 A. Yes.

19 Q. So this is Mr. Treggett's answers to general order
20 standard interrogatories propounded by defendants. In that
21 we'll turn to page 36. This is part of a long answer about
22 his exposure. I'm just going to read a little bit.

23 A. What interrogatory number is this? Is this 26 or 27?

24 Q. It's page 36.

25 A. I'm not asking for the page number, I'm asking for

1 interrogatory number.

2 Q. Looks like interrogatory 59 A to G begins -- the answer
3 begins page 34?

4 A. What's the question? What's the interrogatory?

5 Q. All right. You want me to read that.

6 Employment. Interrogatory number 59 and it's A to G.

7 I'll just read it. You don't have to bother with that.

8 "For each employer whose employee believed they were
9 exposed to asbestos state.

10 A: The employer's name, address, telephone number and
11 the dates of your employment. Your job and the description of
12 your duties.

13 C: The manner of exposure. The duration and time period
14 of exposure and the type of products, e.g. insulation, cement,
15 et cetera to which you were exposed.

16 D: The location of each job site, including the name of
17 each plant and the state and city were located, along with the
18 beginning and ending dates of each such job.

19 E: If you have anytime worked in a shipyard, identify
20 the names of all ships upon you worked.

21 F: For each such job with regard to sub parts D and E,
22 state the name and last known address of all persons with whom
23 you worked regularly on such jobs.

24 G: It says for reach, but I think it meant for each such
25 job with regards to sub parts D and E, state the name and last

1 known address of all persons with whom you worked regularly on
2 such job."

3 I'm just going to read -- you can, on redirect, you can
4 read the whole thing, but I'm just going to read you a little
5 bit of the answer.

6 And I'm on page 36 of the answers.

7 "Plaintiff's exposure to asbestos, as a result of his
8 frequent work on pumps, arose as result of breathing in
9 respirable asbestos fibers released on a repeat and continuing
10 basis from insulation products installed, disturbed, and/or
11 removed, on and from the foregoing pumps, through his work and
12 the work of other tradesmen working in his immediate vicinity.

13 "Plaintiff recalls and will testify that most of the
14 navel equipment he worked on and/or around, including these
15 pumps was insulated. And this insulation was frequently
16 disturbed and/or applied in his presence and in his immediate
17 vicinity.

18 Plaintiff was also required to remove, apply, cut or
19 disturb asbestos-containing blankets, including Asbeston, to
20 various types of navel equipment, including the foregoing
21 pumps.

22 Plaintiff was exposed to asbestos dust as a result of his
23 work with these blankets. Moreover, plaintiff was further
24 exposed in the particulars set forth in the following
25 paragraph to asbestos dust as a result of his removal and/or

1 installation of the asbestos-containing gaskets that were
2 supplied with the foregoing pumps and/or specified for use in
3 the pumps by their manufacturers listed herein."

4 So Mr. Treggett testified pretty fully about his exposure
5 to insulation products, did he not?

6 A. To insulation. He didn't testify about the names of
7 products. He even denied exposure to products to which his
8 lawyer had filed a 2019 claim, that would be Unibestos. And
9 there's a great deal more that I could respond on the question
10 of what he identified and what he didn't identify.

11 Q. I'm sure. What he didn't identify is his lack of
12 knowledge of who made these things, right?

13 A. But his lawyer apparently knew. Because his lawyer filed
14 a 2019 statement before this deposition or interrogatory
15 rather in the Pittsburgh Corning bankruptcy, indicating that
16 he had exposure to Unibestos. But at the trial he denied that
17 exposure and the lawyer argued against that exposure --
18 evidence of that exposure, even though the lawyer had filed a
19 2019 statement attesting to that exposure.

20 Q. We're going to talk later about the 2019 statements. But
21 let me ask you this hypothetical.

22 If a lawyer represents Ford and learns information in the
23 lawsuit and then represents General Motors in another lawsuit,
24 is General Motors deemed to know whatever the lawyer learned
25 about Ford?

1 A. Are you talking about a conflict of interest?

2 Q. No.

3 A. Well then I'm not sure I understand the question.

4 Q. Well, okay. If you don't understand it, I'll withdraw
5 it.

6 THE COURT: Why don't we break for lunch.

7 MR. INSELBUCH: Pardon?

8 THE COURT: Why don't we break for lunch.

9 MR. INSELBUCH: Yes, Your Honor.

10 THE COURT: Come back at 2:00.

11 (Lunch recess at 1:00 p.m.)

12 * * * * *

13 UNITED STATES DISTRICT COURT
14 WESTERN DISTRICT OF NORTH CAROLINA
15 CERTIFICATE OF REPORTER

16 I, Laura Andersen, Official Court Reporter, certify
17 that the foregoing transcript is a true and correct transcript
18 of the proceedings taken and transcribed by me to the best of
19 my ability.

20 Dated this the 27th day of July, 2013.

21 s/Laura Andersen
22 Laura Andersen, RMR
23 Official Court Reporter
24
25

Laura Andersen, RMR 704-350-7493